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States have the power to regulate by legislation the stoppage of railroad trains running through them, according to the view of the Supreme Court of the United States, in the recent case of Lake Shore & M. S. Ry. Co. v. State of Ohio. The decision was rendered in relation to an Ohio law which requires that every railroad company in the State shall have three trains a day, if so many are run, stop at any station on its line containing a population of not less than 3,000. The Lake Shore Company refused to obey the law by having as many as three of its trains stop at the town of West Cleveland, and action was brought against it in consequence. The company contended that the law was unconstitutional, as being antagonistic to the federal constitution, in that it interfered with commerce between the States. It was insisted by counsel that prior decisions of the supreme court show that the police powers of the States, when exerted with reference to matters more or less connected with interstate commerce, are restricted in their exercise, so far as the national constitution is concerned, to regulations pertaining to the health, morals, or safety of the public, and do not embrace regulations designed merely to promote the public convenience. This, in the opinion of the court, was an erroneous view of the adjudications of the court. While cases referred to involved the validity of State laws having reference directly to the public health, the public morals, or the public safety, in no one of them was there any occasion to determine whether the police powers of the States extended to regulations incidentally affecting interstate commerce, but which were designed only to promote the public convenience or the general welfare. There are, however, numerous decisions by the supreme court to the effect that the States may legislate with reference simply to the public convenience, subject, of course, to the condition that such legislation be not inconsistent with the national constitution, nor with any act of congress passed in pursuance of that instrument, nor in derogation of any right granted or secured by it. As the question presented is one of great importance, the court called attention to some cases of the latter class, viz., Gilman v. Philadelphia, 3 Wall. 713; Pound v. Turk, 95 U. S. 459; Escanaba & L. M. Trans. Co. v. City of Chicago, 107 U. S. 678; Caldwell v. Bridge Co., 113 U. S. 205; Huse v. Glover, 119 U. S. 543; Telegraph Co. v. James, 162 U. S. 650; Richmond & A. R. Co. v. R. A. Patterson Tobacco Co., 169 U. S. 311. It was not contended that the statute in question is repugnant to the constitution of the United States when applied to railroad trains carrying passengers between points within the State of Ohio. But the contention was that to require railroad companies, even those organized under the laws of Ohio, to stop their trains or any of them carrying interstate passengers at a particular place or places in the State for a reasonable time, so directly affects commerce among the States as to bring the statute, whether congress has acted or not on the same subject, into conflict with the grant in the constitution of power to regulate such commerce. That such a regulation may be in itself reasonable, and may promote the public convenience or subserve the general welfare, was, according to the argument of the railroad company, of no consequence whatever; for, it is said, a State regulation which to any extent or for a limited time only interrupts the absolute, continuous freedom of interstate commerce is forbidden by the constitution, although congress has not legislated upon the particular subject covered by the State enactment. If these broad propositions are approved, says the court, it will be difficult to sustain the numerous judgments of the supreme court upholding local regulations which in some degree or only incidentally affected commerce among the States, but which were adjudged not to be in themselves regulations of interstate commerce, but within the police powers of the States and to be respected so long as congress did not itself cover the subject by legislation. Cooley v. Board, 12 How. 299, 320; Sherlock v. Alling, 93 U. S. 99, 104; Morgan's Louisiana & T. R. R. & S. S. Co. v. Louisiana Board of Health, 118 U. S. 455, 463, 6 Sup. Ct. Rep. 1114; Smith v. Alabama, 124 U. S. 465, 8 Sup. Ct. Rep. 564; Nashville, C. & St. L. Ry. Co. v. Alabama, 128 U. S. 96, 100, 9 Sup. Ct. Rep. 28; New York, N. H. & H. R. Co. v. New

York, 165 U. S. 628, 631, 632, 17 Sup. Ct. Rep. 418, were all cases involving State regulations more or less affecting interstate or foreign commerce, but which were sustained upon the ground that they were not directed against nor were direct burdens upon interstate or foreign commerce, and having been enacted only to protect the public safety, the public health, or the public morals, and having a real, substantial relation to the public ends intended to be accomplished thereby, were not to be deemed absolutely forbidden because of the mere grant of power to congress to regulate interstate and foreign commerce, but to be regarded as only incidentally affecting such commerce, and valid until superseded by legislation of congress on the same subject. It is noteworthy that four out of the nine judges dissented, two of them filing opinions. One of these, by Justice White, was based on the ground of discrimination against through trains; the other, by Justice Shiras, contended that trains running from one State to another, carrying mails, etc., were subject to the control of congress, and not to that of the State legislature, and that the question was one of the convenience of the entire public, and not that of the local public alone. It seems clear from the closeness of the decision in this case that the border line between federal and State control in the matter of railroad transportation has not yet been finally drawn.

NOTES OF IMPORTANT DECISIONS.

MUNICIPAL CORPORATION — ORDINANCE — REASONABLENESS.—In Frost v. City of Chicago, 52 N. E. Rep. 869, decided by the Supreme Court of Illinois, it was held that a city ordinance making it unlawful to cover any package of fruit with any colored netting, or other material having a tendency to conceal the true color or quality of any such goods which may be offered for sale, is void, as unreasonable and oppressive. The court said in part: "We have reached the conclusion that the ordinance is a vexatious and unreasonable interference with and restriction upon the rights of dealers in certain articles of trade and commerce. The only valid basis upon which such a regulation can rest is that its purpose is to prevent deception, and imposition upon buyers of such articles as are named in the ordinance. The evidence shows, as common observation would teach, that such packages must have some covering, and shows, also, that tarlatan has been found the best and most suitable covering for the preservation of fruit so packed and sold; and the validity of the ordinance is made to depend, and indeed its validity is defended only upon the question of the color of the material. It is not pretended that there is anything in red tarlatan which is deleterious to health, or which imparts to the fruit any noxious material or quality, but only that it tends to impart to the fruit beneath a more wholesome tint or appearance than it would otherwise have. It is natural, and not unlawful, for the packer and dealer to put up and offer for sale his goods in an attractive form; and a regulation would not seem to be reasonable which would prevent the dealer in certain commodities from offering for sale his goods in packages tinted so as to correspond in some degree with the color of the goods themselves. No buyer who is ordinarily careful and intelligent is deceived by such devices of tradesmen. He may examine what he buys, and no law can protect him from the consequences arising only from his own folly. At most, the colored netting would tend to conceal the true color or quality of only the top layer of the fruit in the package, leaving the same latitude for deception as in cases where no covering is used. It will be noticed that the provision in question of the ordinance, does not make it unlawful to sell decayed or unwholesome fruit, or to practice deception on the public by methods employed in packing or displaying it. From whatever view the ordinance is regarded, it is difficult to see how it can be of any public benefit whatever, and while, ordinarily, that is a question for the municipal legislature, it may be considered by the courts in determining the question of reasonableness. It is not contended by counsel that the power to pass such an ordinance is in terms conferred on the city council by any act of legislature (City of Lake View v. Tate, 130 Ill. 247, 22 N. E. Rep. 791), but the power to enact it is referable to the general police power of the city; and it is conceded that the question of its reasonableness is open for decision, and is the subject of fair contention in the case. It was shown, and is a matter of common knowledge, that much fruit is shipped and sold wrapped up in tissue paper and tinfoil, and in packages and baskets covered with wood, all of which material effectually conceals the 'true color and quality' of the fruit until removed. It would be as reasonable to prohibit the one as the other. Fruit dealers would be subjected to unjust and oppressive discrimination by the enforcement of such an ordinance. Being unreasonable and oppressive in character, the ordinance is void, and should have been so declared by the court below."

CARRIERS OF GOODS—CARS — VENTILATION—NEGLIGENCE.—In Densmore Commission Co. v. Duluth, S. S. & A. Ry., 77 N. W. Rep. 904, decided by the Supreme Court of Wisconsin, it appeared that a refrigerator car was loaded by plaintiff with apples and consigned to defendant

carrier, under agreement that the latter should not be liable for loss or damage by causes beyond its control or by heat. The car was under the control of defendant for two days, and the temperature varied from 47 to 68 degrees above zero. It was at a season when cold weather was to be anticipated, and the car was selected to keep the apples at a uniform temperature. Before consignment plaintiff kept the car ventilated by keeping one or more of the side doors open; but these were so constructed that they could not be kept open in transit, and they were airtight when closed. The car was not designed to be ventilated, and though there was an ice box open at the top, it could not be kept open while in transit. It was held that there was no such negligence on the part of defendant as to make it liable for damage caused by heat and lack of ventilation. The following is from the opinion: "If the decay of the apples was by reason of any negligence on the part of the carrier, it may be presumed, as contended by the plaintiff, that such negligence occurred while the apples were in the custody of the defendant as the last carrier. Laughlin v. Railway Co., 28 Wis. 204; Lamb v. Railway Co. (Wis.), 76 N. W. Rep. 1124. In the case last cited, the well-settled rule is recognized that stipulations limiting the common-law liability of the carrier are upheld, except in so far as they attempt to exempt the carrier from the consequences of its own negligence. *Id.*; Abrams v. Railway Co., 87 Wis. 485, 58 N. W. Rep. 780; Loeser v. Railway Co., 94 Wis. 571, 69 N. W. Rep. 372; Leonard v. Whitcomb, 95 Wis. 648, 70 N. W. Rep. 817; Schaller v. Railway Co., 97 Wis. 31, 71 N. W. Rep. 1042. Under the shipping order in evidence, the defendant could not be held liable, except by proving some negligence on its part. We fail to find any proof of such negligence. The cars containing such applies started from Vermontville, 350 miles from St. Ignace, and were received by the defendant at the latter place November 3d, and were shipped November 4th, and reached West Superior in time to notify the plaintiff of their arrival on the morning of November 6th. During the time the cars were at St. Ignace the temperature was below seventy degrees, and a part of the time below fifty degrees. It was at a season of the year when cold, instead of heat, was to be anticipated. The refrigerator cars were, manifestly, selected by the plaintiff to keep the inside of the cars at a certain or uniform temperature during transit. The plaintiff claims to have kept the cars ventilated while they were at Vermontville by keeping one or more of the side doors open. Those doors were constructed so as to open outward, and to be airtight when closed. They were the only means of communicating fresh air to the apples. Obviously, it was impracticable to open any of such doors while the cars were in transit. Besides, such doors were sealed up, and designed to be so sealed up. This must have been known to the plaintiff, as an habitual shipper. Such refrigerator cars were not ventilated cars, nor designed to be ventilated. True, each car had an ice box, open at the top, but it seems to have been impracticable to keep that open while in transit. Besides, the plaintiff accepted the cars, loaded the apples, and signed the shipping order mentioned, and must be deemed to have done so with full knowledge of the kind, the construction, and the condition of the cars, the season of the year, and the probable time the apples would be in transit. If the plaintiff desired to have the apple department of the cars ventilated, by opening the side doors at stations, from time to time, during transit, then it should have had such stipulation inserted in the shipping order. If such had been the case, the cars probably would not have been sealed. If the apples decayed by reason of negligence, it was, manifestly, the negligence of the plaintiff. In other words, the plaintiff assumed the risk of shipping the apples in that kind of cars."

CONTRACT IN WRITING—PAROL EVIDENCE.—In Violette v. Rice, 53 N. E. Rep. 144, decided by the Supreme Judicial Court of Massachusetts, it was held that evidence that at the time an actress made a written agreement with the proprietor of certain theatrical companies "to render services at any theaters" it was agreed that the word "services" meant services in a particular part in a certain play, contradicts the instrument, and is inadmissible. It was further held that by a written contract of employment of an actress, providing that she shall "conform to and abide by all the rules and regulations" adopted by the employer for government of his theatrical companies, she adopts the rules, though she does not know what they are. The court said in part: "We are of opinion that the evidence could not be received. The plaintiff accepted the defendant's rules by signing the contract, whether she knew them or not. It is not a question here whether an indorsement upon a contract, not referred to upon the face of the instrument, is part of the contract by virtue of the indorsement alone. The plaintiff expressly adopted any rules which there might be within the reasonable import of the name, even though not set out in the contract, and, if she adopted them in the dark, she was bound none the less. See Railroad Co. v. Snyder, 56 N. J. Law, 326, 28 Atl. Rep. 376. With or without the rules, the engagement to render services expressed a general employment, which could not be limited to a single part without contradiction; for, to give evidence requiring words to receive an abnormal meaning is to contradict. It is settled that the normal meaning of language in a written instrument no more can be changed by construction than it can be contradicted directly by an avowed inconsistent agreement, on the strength of the talk of the parties at the time when the instrument was signed. Black v. Batchelder, 120 Mass. 171; Flynn v. Bourneuf, 143 Mass. 277, 278, 9 N. E. Rep. 650; Power Co. v. Howard, 150 Mass. 495, 23 N. E. Rep. 317; Goode v. Riley, 153 Mass.

585, 586, 28 N. E. Rep. 228; Poole v. Plush Co., 171 Mass. 49, 52, 50 N. E. Rep. 451; Grimston v. Cunningham (1894), 1 Q. B. 125. When evidence of circumstances or local or class usage is admitted, it tends to show the ordinary meaning of the language in the mouth of a normal speaker, situated as the party using the language was situated; 'but to admit evidence to show the sense in which words were used by particular individuals is contrary to sound principle.' Drummond v. Attorney-General, 2 H. L. Cas. 837, 863. 'If that sort of evidence were admitted, every written document would be at the mercy of witnesses that might be called to swear anything.' Nichol v. Godts, 10 Exch. 191, 194. To similar effect, Shaw, C. J., in Brown v. Brown, 8 Metc. (Mass.) 573, 577. The case of Keller v. Webb, 125 Mass. 88, goes a good way, but was not intended, we think, to qualify the principle settled by the earlier and later Massachusetts cases, some of which we have cited. In that case, evidence of conversation was admitted to show that 'casks,' in a written contract, meant casks of a certain weight. It was assumed that the contract meant casks of some certain weight, but did not state what, and thus, that the evidence supplemented, without altering, the written words. A similar explanation applies to Stoops v. Smith, 100 Mass. 63. The other cases cited do not need particular notice."

CRIMINAL LAW—RAPE—FORCE.—The case of Payne v. State, 49 S. W. Rep. 604, decided by the Court of Criminal Appeals of Texas, presents some unusual features of the law applicable to that class of crimes. The holding was that the act of copulation of a male person with a woman, she being asleep at the time, and not consenting, is sufficient force to constitute rape, and that carnal knowledge of a woman, by force, and "without" or "against" her consent, may be had while she is asleep, though no greater force is used than is involved in the act of copulation. The court says in part: "As to the second proposition, the question is sharply presented, was it competent for the court to present or define the question of force as was here done? That is, the charge, in effect, instructed the jury that the act of copulation of a male person with a woman, she being asleep at the time, and not consenting, was sufficient force to constitute the offense of rape. Ordinarily the statutory definition of force would be sufficient, but the facts in this case, so far as the State was concerned, raised the direct issue before the jury, as to whether or not a rape could be committed on a woman while she was asleep, she not consenting to the act; and in such case it was entirely proper for the court to instruct the jury as to the required force under such circumstances, and the instructions given was in accord with the authorities on the subject. See Mooney v. State, 29 Tex. App. 257, 15 S. W. Rep. 724; Com. v. Burke, 105 Mass. 376; People v. Bartow, 1 Wheeler, Cr. Cas. 378; Walter v. People, 50 Barb. 144; Reg. v. Young, 14 Cox, Cr. Cas. 114; Rex v. Mayers, 12 Cox, Cr. Cas. 311; 1 Whart. Cr. Law, p. 524, § 561, and note. In Mooney v. State, *supra*, this language is used: 'The second position urged by the State is that, "the woman being asleep when penetrated, rape is the result, though no greater force is used than that involved in the act." We have given this proposition thorough examination. The authorities are quite inharmonious. Apparently there is a serious conflict of opinion upon this subject, but, when carefully scrutinized, the conflict will be found, to a great extent, apparent only. Our researches lead us to these conclusions: If the statute defines rape to be carnal knowledge of a woman by force and "without" her consent, then the proposition above stated is correct. On the other hand, if the statute defines rape to be the carnal knowledge of a woman by force and "against" her consent, then the proposition is not correct. Some cases hold the proposition correct whether the statute says "against" or "without." ' Counsel for appellant, however, insists that this question was not before the court in Mooney's case. We have examined the decision carefully, and we cannot agree to this. We are not inclined to make the distinction between the terms 'without consent' and 'against consent' as made in the above case, because we believe there is really, in effect, no difference between the expressions. Rape must be by force and without consent, as is stated by our statute, which really means the same thing as 'against consent.' If the female is asleep, of course, she cannot give her express consent, but, if she is willing to the act, there is tacit consent, and there need not be express consent; so that in the final analysis the act must be against her will and consent, and the force used is only such force as may be used in the act of copulation. We quote from the case of Reg. v. Young, *supra*—a case very similar to this—as follows: 'The evidence proved that the prosecutrix, a married woman, being partially under the influence of drink, on the 2d February, 1878, went to bed in her lodgings in the Seven Dials, with her youngest child, about 9 o'clock. Her husband, with another child, came home about midnight. About 4 o'clock in the morning, when all four were asleep, the prisoner entered the room—the door not having been locked—got into bed, in which were the prosecutrix, her husband, and the two children, and proceeded to have connection with the prosecutrix, she being at the time asleep. When she awoke, at first, the prosecutrix thought that it was her husband; but, on hearing the prisoner speak, she looked around, and, seeing her husband by her side, she immediately flung the prisoner off her, and called out to her husband. The prisoner ran away, but before he could make his escape he was secured by a police constable. None of the parties had ever seen the prisoner before. In answer to questions put by me, the jury found that the prosecutrix did not consent before, after, or at the time of the prison-

er's having connection with her, that it was against her will, and that the conduct of the prosecutrix did not lead the prisoner to the belief that she did consent. I put the last question to the jury in consequence of what fell from Denman, J., in Reg. v. Flattery (1877), 2 Q. B. Div. 410-414, 13 Cox, Cr. Cas. 388. Upon these findings I directed a verdict of guilty, but reserved the question as to whether the conviction was right; the court of criminal appeal, in Reg. v. Flattery, having expressed a desire that the case of Reg. v. Barrow (1869), L. R. 1 Cr. Cas. 156, 28 Law J. M. Cas. 20, 11 Cox, Cr. Cas. 191, should be reconsidered.' Lord Coleridge, C. J., said: 'We are all of opinion that the addition made by the learned baron to the statement of this case puts an end to any doubt as to the case, under the circumstances, being clearly one of rape.' It follows from these authorities that the court did not err in defining the force to be used on a woman when asleep, as was done. This was a presentation of the State's theory, predicated on its evidence. The court immediately instructed the jury on appellant's theory—that is, in his testimony it was insisted that he had the consent of the prosecutrix to the act of copulation; and the court, on this subject, gave the following instruction: 'You are further charged, if you believe from the evidence that the said Jessie Winn, by acts or conduct toward the defendant which was reasonably calculated to induce the defendant to believe that he had the consent of the said Jessie Winn to have carnal connection with her—caused the defendant to believe that he had the consent of the said Jessie Winn to have such intercourse with her—and, so believing, the defendant had such carnal connection, if any, with the said Jessie Winn, you will acquit him.' This instruction, given in connection with the former instruction, and immediately following it, adequately presented appellant's theory of defense, and prevented any possible confusion or misconception in regard to the preceding charge, even if it be conceded that any misconception could result therefrom."

BANKS AND BANKING—CHECKS — FORGERY—NEGLIGENCE.—It is held by the Supreme Court of Maine, in Neal v. Coburn, that a bank is presumed to know the signatures of its depositors; that if a bank pay to an innocent holder for value the amount of a check purporting to be drawn upon it by one of its depositors, but the signature to which was in fact forged, the bank cannot recover back the amount from such holder, and that if such holder, on demand, repay the amount to the bank, that does not entitle him to recover the amount from a prior innocent holder for value, who had indorsed the check. The following is from the opinion: "In this country the earliest published judicial decision upon the question appears to have been made in 1802 by the Supreme Court of Pennsylvania. An innocent holder of a check for value presented it for deposit to his credit in the bank upon which it was drawn. The bank received it, and credited the amount to the holder, and debited the same to the supposed drawer. It soon proved to be a forgery, whereupon the bank charged the amount back to the holder's account. The holder then brought an action against the bank, and recovered judgment. Levy v. Bank, 1 Bin. 27. In 1825 a case similar in principle came before the United States Supreme Court, which always decides for itself questions of general commercial law as applicable to the whole country. The Bank of the United States remitted to the Bank of Georgia papers purporting to be bank notes of the latter bank, which were received and credited to the account of the former bank. Some days afterwards the supposed notes were found to be counterfeit, and the Bank of Georgia tendered them back to the United States bank, and charged the amount back to that bank, and refused to acknowledge any indebtedness for them. The United States Bank brought an action for balance of an account stated, and for money had and received, and was held entitled to recover the amount so deposited. Bank of United States v. Bank of Georgia, 10 Wheat. 333. This decision does not appear to have been questioned in any federal court. The applicability of this decision is manifest when it is recalled that the acceptor of a bill of exchange is in the same category as the maker of a note. If one who pays what purports to be his note cannot recover the money back, no more can one who pays what purports to be a bill of exchange or check drawn upon him.

"In 1820, five years earlier than the case in 10 Wheat., a similar case occurred in Massachusetts between two banks as to the counterfeit bills of one of them, which it received from the other, and paid as genuine. It was held that it could not recover back the money paid. Gloucester Bank v. Salem Bank, 17 Mass. 33. As late as 1890 the Supreme Court of Massachusetts stated the rule as follows: 'In the usual course of business, if a check purporting to be signed by one of its depositors is paid by a bank to one who, finding it in circulation or receiving it from the payee by indorsement, took it in good faith for value, the money cannot be recovered back on the discovery that the check is a forgery.' First Nat. Bank v. First Nat. Bank, 151 Mass. 282, 24 N. E. Rep. 44.

"In a New York case, in 1850, the bank upon which a draft was drawn refused payment for want of funds of the drawer, whereupon Goddard, the correspondent of the supposed drawer, being informed of the draft, but without seeing it, left his own check, for its payment, which amount was remitted to the holders of the draft. The next day Goddard, on seeing the draft, found it to be forged. Held, however, that he could not recover back the amount of the holder. Goddard v. Bank, 4 N. Y. 149. In 1871 a bank in New York paid to an innocent holder a forged draft drawn upon it, and then sought to recover the money back. The court rendered judgment for the defendant as in the earlier case, using this language:

'For more than a century it has been held and decided without question that it is incumbent upon the drawee of a bill to be satisfied that the signature of the drawer of the bill is genuine,—that he is presumed to know the handwriting of his correspondent; and, if he accepts or pays a bill to which the drawer's name has been forged, he is bound by the act, and can neither repudiate the bill nor recover the money paid. * * * A rule so well established and so firmly rooted in the jurisprudence of the country ought not to be overruled or disregarded.' National Park Bank v. Ninth Nat. Bank, 46 N. Y. 80, 81.

"Other courts have also recognized the rule more or less explicitly. Commercial Bank v. National Bank, 30 Md. 11; Germania Bank v. Boutell, 60 Minn. 192, 62 N. W. Rep. 327; St. Albans v. Farmers' Bank, 10 Vt. 141; Star Ins. Co. v. State Bank, 60 N. H. 442; Deposit Bank v. Fayette Nat. Bank, 90 Ky. 22, 13 S. W. Rep. 339.

"The only allusion to the rule we have found in the published opinions of this court is in Belknap v. Davis, 19 Me. 457, in 1841, where, in an action by the holder against the acceptor of a bill of exchange, it was held that 'the acceptance admits the signature of the drawer and the authority to draw.' So far as it goes, this would seem to be in the same line with the decisions above cited and quoted from, and would seem to indicate that the rule so long and firmly upheld by those decisions is in harmony with the law of commercial paper in this State.

"In some cases the courts have been led to inquire whether the condition of the holder had changed between the payment of the check and notice to him of the forgery, and to hold that, if the holder had suffered no loss by reason of the payment, he should refund the amount to the bank or drawer. The rule cited does not make any such distinction,—does not call for any inqury into the condition of the holder. To do so is to abandon the rule, and with it all certainty. It would leave every person receiving payment on a check in complete uncertainty as to whether and when it was in fact finally paid. It would be a destructive blow to the usefulness of checks as an instrumentality of trade. It is also against the reason and equity of the rule as stated by the courts recognizing it, and hence is inconsistent with the rule. Wherever the rule is upheld, the doctrine of such cases must be rejected.

"The reason usually given for the rule is that it is impracticable for the indorsee or holder of a bill of exchange or check to know or learn whether the signature of the drawer is genuine, and that the bank or other drawee has the best means of knowing or learning the fact; or, as sometimes expressed, the bank may be presumed to know the signature of its depositor, and the acceptor the signature of his business correspondent. Lord Mansfield, in Price v. Neal, *supra*, compared the equities. He said that the action for money had and received could not be maintained, unless it was against conscience in the defendant to retain it, and that it was not against conscience for an innocent holder to retain money paid to him by the drawee of a bill of exchange which he had in good faith paid value for. As between parties equally innocent, there seems to be no more equity in throwing off the loss from one to the other than in leaving it where it fell. In cases like these, however, where the loss fell in the regular course of business upon the bank, which could have known and should have known the forgery, it seems positively inequitable to throw off that loss upon an innocent man who had much less opportunity of knowing. As also said by Lord Mansfield, in Price v. Neal, if negligence is to be considered, it was as much, if not more, in the drawee or bank, as in the holder. But whatever the reason or equity of the rule, and however much it may be criticised by text-writers and theorists, it has been so long established and so explicitly recognized by the courts in commercial communities that it should stand as the rule until modified by legislative action. It evidently has been found to be a workable rule, and its plainness and certainty should not be obscured by fine judicial distinctions, confusing to the lay mind.

"It has been suggested that this rule breaks against another rule of the law of commercial paper, viz.: that the defendant, by indorsing the check, guarantied to every subsequent holder the genuineness of the signature of the drawer. But the bank upon which the check was drawn did not become a holder. It did not purchase the check."

PRINCIPAL AND SURETY — EFFECT ON SURETY'S LIABILITY OF EXTENSION OF TIME IN CONSIDERATION OF THE PAYMENT OF INTEREST IN ADVANCE.

It is said in Flynn v. Mudd,[1] holding the sureties discharged, that "the doctrine, that giving further time to the principal debtor, without the assent of the surety, releases him from the contract, seems to be universally admitted and acted upon. * * * To render such a defense available, it is necessary that the contract extending the time for payment should be such as would prevent the creditor from maintaining an action on the original agreement before the expiration of the extended time. To have that effect it must be based upon a sufficient consideration, and must be for a definite period. But possessing these requirements, it must also have been entered into, between the principal debtor and the creditor, without the consent of the surety, or his subsequent ratification, to constitute a valid defense. And this defense is

[1] 27 Ill. 323.

based on the principle that the surety can only be held to perform the precise terms of his contract. He cannot be charged by the acts of others beyond the terms of his agreement." It is also essential that the creditor should have notice of the fact of suretyship at the time of the making of the agreement for extension. And it has been held[2] that an answer by one of the defendants in an action against joint makers on a promissory note, alleging that defendant was only a surety, and that after the maturity of the note the plaintiff, without his knowledge or consent, agreed to extend the time of payment in consideration of the payment of interest in advance, is insufficient, where it does not allege that at the time of making such agreement, the plaintiff had notice that he was a surety and not a joint maker. That there must be an agreement there is no question, but there is a wide divergence of opinion as to the agreement itself. Some courts maintain[3] that the payment of interest in advance of itself constitutes or implies an agreement for extension, while others insist that, although such a payment is a good consideration for an agreement to extend, there must be an actual agreement to extend, and that one cannot be implied therefrom.[4] In Woodburn v. Carter,[5] reversing a judgment in plaintiff's favor against the sureties, it is said that "the inference is irresistible that where a creditor receives a payment of interest in advance on his notes from the debtor, there is a contract to extend the time of payment during the period for which interest is paid." And in Hamilton v. Winterrowd,[6] it is said that "when a debtor pays to his creditor interest in advance on money which he owes him, and the creditor receives it as such, in the absence of an understanding to the contrary, the implication is irresistible that the debtor is to have the use of the money during the time for which interest is paid, and the creditor shall forbear collecting during the same time. We think the law clearly implies a forbearance in such a case." But in Russell v. Brown,[7] the court says that "while the taking of interest to a definite period in advance of the time when the note fell due will be held a good consideration to support such promise, if the promise was in fact made, it will not be of itself evidence of such a promise, because this fact of itself does not disable the creditor from suing." And in Davis v. Graham,[8] holding that mere reception of interest in advance, without an agreement to extend, will not discharge the sureties, the court says that "as to the implication arising from the alleged advance payment of interest, we have only to say, admitting the rule for which counsel contend, that it cannot apply when it would defeat the clear intention of the parties. If the creditor manifestly intends to hold the sureties, and it is obvious that he refused to extend the time, the simple act of the advance payment of interest will not justify the inference or implication that there was such an agreement." In Coster v. Mesner,[9] where the payment of a certain sum of money was applied by the plaintiff to the extinguishment of accrued interest, and the balance to interest for a period in advance, it is held that such payment of advance interest does not constitute such a promise of extension of time as will prevent the holder from bringing action against the principal, and therefore does not discharge the surety. But it has been held that the execution of a renewal note, which is taken as conditional payment of the original note, and the payment of interest in advance, constitute an agreement to extend the time of payment of the original until the maturity of the renewal note, and discharge

[2] McCloskey v. Indianapolis Manufacturers' & Carp. Union, 67 Ind. 86.

[3] Woodburn v. Carter, 50 Ind. 376; Hamilton v. Winterrowd, 43 Ind. 393; Starrett v. Burkhalter, 86 Ind. 439; Atkinson v. Talbot, 1 Disney (Ohio), 111; Bank of B. C. v. Jeffs, 15 Wash. 230; Preston v. Henning, 6 Bush (Ky.), 556, 562; Gardner v. Gardner, 23 S. Car. 588; Osborn v. Low, 40 Ohio St. 347, distinguishing Jones v. Brown, 11 Ohio St. 601, on the ground that the note in that case not specifying when it was payable was payable immediately, and that this amounted to a reservation of the right to sue immediately. See also what is said in New Hampshire Sav. Bank v. Colcord, 15 N. H. 119.

[4] Agricultural Bank v. Bishop, 6 Gray, 317; Harnsbarger v. Kinney, 13 Gratt. 511; Freeman's Bank v. Rollins, 13 Me. 202, distinguishing Kennebec Bank v. Tuckerman, 5 Greenl. 130; Lime Rock Bank v. Mallett, 34 Me. 547, 42 Me. 349; Russell v. Brown, 21 Mo. App. 51; Citizens' Bank of Bowling Green v. Moorman, 38 Mo. App. 484; Nevada First Nat. Bank v. Gardner, 57 Mo. App. 268; Coster v. Mesner, 58 Mo. 549. But see First Nat. Bank of Springfield v. Leavitt, 65 Mo. 562; Schnitzler v. Fourth Nat. Bank, 1 Kan. App. 674.

[5] 50 Ind. 376.

[6] 43 Ind. 393.

[7] 21 Mo. App. 51.

[8] 29 Iowa, 514.

[9] 58 Mo. 549.

the surety.[10] But no contract for an extension of time which will discharge the surety can be implied from the voluntary payment by the principal of interest in advance at the time of the payment of interest then overdue, and as a sort of compensation for failure to pay the overdue interest at the proper time, no promise of indulgence being expressly given or contracted for.[11] See the language of the court in Gard v. Neff[12] in passing on the question whether there was error in charging that "the payment of interest in advance is not of itself conclusive evidence of a contract to extend the time of payment for the time for which interest may have been paid." It is said in Mariners' Bank v. Abbott[13] that "the mere receipt of interest for a stipulated time from the principal by the creditor, after the note has become payable, it has been decided in this State, is not sufficient evidence of an agreement to give further credit." But the case is one in which it did not appear on the face of the note that there were sureties, and the evidence did not show whether there was knowledge of that fact. The indorsement upon a note of the words "received" and "renewed," with the dates and nothing more, may fairly be considered as meaning received the interest for a renewal, and "the payment of interest in advance, though it has been held by this court not to be of itself sufficient evidence of an agreement to give further credit, is undoubtedly a good consideration for such an agreement."[14] And extension of time of payment, evidenced by payment of interest in advance and declarations of creditor to principal debtor that he would wait that long, there being no written agreement, does not discharge the surety, as such payment of interest did not prevent the creditor from suing at any time, it being appparent from the evidence that the creditor had no intention of tying his hands.[15] Payments of interest having been made in advance from time to time and indorsed on the note, a copy of which is included in a new contract by which the surety for a valuable consideration agrees to be holden for an extended period, he is not discharged by a similar reception of interest in advance during such contract period, as it is to be inferred that there was knowledge respecting the previous payments of interest, and no objection to the similar reception thereof during the time for which the signers agreed to be holden.[16]

There are many other cases in which it has been held that payment of interest in advance in consideration of which time of payment is extended will discharge the surety.[17] A pledgor of property whose relation to the pledgee is that of surety for her husband, is discharged from liability as to certain of the notes secured by the pledge by extensions thereof granted in consideration of the payment of interest in advance, where the facts do not show that she intended at the time of the bailment that the property should stand as continuing security.[17a] And in Wright v. Bartlett,[18] it is held that extension of the time of payment granted by the holder to the principal debtor in consideration of the payment of interest in advance without the knowledge of the surety, will discharge the surety even though the principal debtor retain the right to pay the debt before the termination of the extended period. In Dunham v. Downer,[19] which was a bill in chancery to prevent the enforcement of the judgment in the case of Marshall v. Aiken,[20] the sureties were granted an injunction. But payment in advance of interest on a forged renewal of a note is not a valid consideration for extension thereby given, is not binding as between the holder and the principal debtor, and, therefore, does not discharge the surety on the

[10] First Nat. Bank of Springfield v. Leavitt, 65 Mo. 562. See also Schnitzler v. Fourth Nat. Bank, 1 Kan. App. 674.

[11] Harnsbarger v. Kinney, 13 Gratt. 511.

[12] 39 Ohio St. 610.

[13] 28 Me. 280.

[14] Lime Rock Bank v. Mallett, 34 Me. 547, 42 Me. 349.

[15] Hosea v. Hawley, 57 Mo. 357.

[16] New Hampshire Sav. Bank v. Gill, 16 N. H. 578. See also New Hampshire Sav. Bank v. Colcord, 15 N. H. 119.

[17] Kennedy v. Evans, 31 Ill. 258; Peterson v. Stege, 67 Ill. App. 147; Schrieber v. Traudt (Ind.), 49 N. E. Rep. 605; Kaler v. Hise, 79 Ind. 301; Rose v. Williams, 5 Kan. 483; Hubbard v. Ogden, 22 Kan. 363; Schnitzler v. Fourth Nat. Bank, 1 Kan. App. 674; Christner v. Brown, 16 Iowa, 139; Dubuisson v. Folkes, 30 Miss. 432; St. Joseph F. & M. Ins. Co. v. Hauck, 71 Mo. 465; Merchants' Ins. Co. v. Hauck, 83 Mo. 21; Stillwell v. Aaron, 69 Mo. 539; Crafton Bank v. Woodward, 5 N. H. 99; New Hampshire Sav. Bank v. Ela, 11 N. H. 35; Crayson's Appeal, 108 Pa. 581; People's Bank v Pearson, 30 Vt. 711; Binnian v. Jennings, 14 Wash. 677; Glenn v. Morgan, 23 W. Va. 467.

[17a] First Nat. Bank v. Goodman (Neb.), 77 N. W. Rep. 756, reversing 75 N. W. Rep. 846.

[18] 43 N. H. 548.

[19] 31 Vt. 249.

[20] 25 Vt. 332.

original note.[21] In Marks v. Bank of Missouri,[22] holding the surety liable, it is said that "either the bank had or it had not the right by law to receive interest in advance. If that right was conferred by law, then the payment of interest in advance was no consideration for the promise. If the bank had not the right to take interest in advance, then the payment of it, in consideration of forbearence to sue, was usurious. If the contract was usurious, then so far as the excess of lawful interest was concerned it was of no value to the bank, for it might have been recovered the next moment after it was paid. Such a contract did not prevent the bank from suing, as the money might have been returned or tendered, and the contract would have thereby been rescinded." Although interest in advance will answer as consideration for an extension of time, it is held that undated mere indorsements that the time of payment is extended to specified dates, and that the interest has been paid to specified dates, without anything to show whether the interest was paid in advance or not, do not show a binding agreement which will discharge the surety.[23] Where there is a reservation of rights by the creditor there is, of course, no defense;[24] and likewise when interest is taken in advance for an extension of time in accordance with a known custom.[25] But a surety on a note who does not assent to delay given in consideration of the payment of interest in advance is not liable for contribution to a co-surety who did assent and against whom judgment has been obtained.[26]

Usurious Interest.—In Vilas v. Jones,[27] which was an application for leave to amend, it is said that while an executory promise to pay a usurious premium is not consideration, "the case is otherwise, however, where the usurious premium for the forbearance of the debt for the stipulated period is paid down." The majority of the cases hold that extension of time in consideration of the prepayment of usurious interest will discharge the surety.[28] It is a matter of no consequence that the interest was computed at a usurious rate.[29] A contract for usurious interest being valid by statute to the extent of the legal rate, extension of time given in consideration of usurious interest in advance without the knowledge of the sureties discharges them.[30] But it is held in Farmers' & T. Bank v. Harrison,[31] that payment of usurious interest in advance does not discharge the surety as it creates no legal obligation on the part of the holder to refrain from suit upon the note. As shown by the cases cited, the rule would seem to be that an extension of time granted by the creditor to the principal debtor in consideration of the payment of interest in advance, without the knowledge or consent of the surety or his ratification thereof, and without a reservation by the creditor of the right to sue, will discharge the surety. It has been seen that there is a great difference of opinion as to the implication of an agreement to extend from the fact of the payment of interest in advance. Under ordinary circumstances it is reasonable to assume that no man would deliberately pay money in advance of the time when it would regularly be due, unless there was some advantage to be gained by so doing. The parties must have intended something—there must have been some reason why the debtor was willing to pay and the creditor to receive interest not due. It seems that the natural inference would be that the parties intended to carry the indebtedness for the period for which such interest was paid in advance, in the absence of anything in the facts and circumstances of the case clearly tending to show the contrary. The weight of authority as shown above is that prepayment of usurious interest as consideration for an extension is binding, and discharges the surety without whose knowledge, consent, or ratification the extension was granted. What weight this rule should have it seems to me ought to depend

[21] Officer v. Marshall, 9 Tex. Civ. App. 428.

[22] 8 Mo. 316.

[23] Crossman v. Wohlleben, 90 Ill. 537.

[24] Oxford Bank v. Lewis, 8 Pick. 458; First Nat. Bank v. Lineberger, 83 N. Car. 454.

[25] Shafford Bank v. Crosby, 8 Greenl. 191; Crosby v. Wyatt, 23 Me. 156; Blackstone Bank v. Hill, 10 Pick. 129.

[26] Crosby v. Wyatt, 10 N. H. 318.

[27] 10 Paige, 76.

[28] Hollingsworth v. Tomlinson, 108 N. Car. 245; Knight v. Hawkins, 93 Ga. 709; Harbert v. Dumont, 3 Ind. 346; Cross v. Wood, 30 Ind. 78; White v. Whitney, 51 Ind. 124; Henningham v. Bedford, 1 B. Mon. 325; Armistead v. Ward (Va.), 2 P. & H. 504; Niblack v. Champeny, 10 S. Dak. 165; Austin v. Dorwin, 21 Vt. 38; Scott v. Scruggs, 60 Fed. Rep. 721; Scott v. Scruggs (Ala.), 11 South. Rep. 215; Warner v. Campbell, 26 Ill. 282. See also Danforth v. Semple, 73 Ill. 170. But see Marks v. Bank of Missouri, *supra*.

[29] Grayson's Appeal, 108 Pa. 501.

[30] Galvin v. Wiggam, 27 Ind. 489; Redman v. Deputy, 26 Ind. 338.

[31] 57 Mo. 503.

upon the law of each State as to usury. If usury avoids the contract into which it enters, then it ought to be no consideration for the agreement, not binding on the creditor, and should not release the surety.[32] In those States where usurious interest forfeits all the interest the effect would be the same. If usurious interest is void only as to the excess, the creditor would be bound and the surety discharged. There has been no attempt to include herein cases in which the payment for the extension is treated merely as a bonus or premium and not as interest, those in which there was only a promise to pay interest, or in which a note was given for the advance interest, except where such note was paid before the expiration of the extended time.

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[32] But see language of Vilas v. Jones, *supra*.

CRIMINAL LAW — BIGAMY—DEFENSES.

RUSSELL v. STATE.

Supreme Court of Arkansas, February 11, 1899.

1. Defendant's honest belief that he had been granted a divorce before his second marriage is no defense to a prosecution for bigamy.

2. Such evidence is admissible as affecting the term of imprisonment to be inflicted.

HUGHES, J.: Appellant was indicted for bigamy. He demurred to the indictment, but in his argument does not insist upon the demurrer, which we do not discuss here. We think the indictment sufficient. He was tried, convicted, and sentenced for three years in the penitentiary. He appealed to this court. The evidence showed that when appellant married a second time his first wife was living, from whom he had not been divorced. The appellant sought to show in defense that at the time of his second marriage he believed in good faith that a divorce had been granted him from his first wife, and that he did not intend to violate the law; but the court refused to allow such proof. The defendant offered in evidence the following certificate: "State of Arkansas, County of Nevada. November 22, 1898. This is to certify that the circuit court of the aforesaid county granted the said Manney Russell a divorce from his wife, Ida Russell, and she has no interest in his property. Witness my hand. W. J. Munn, Circuit Clerk, per A. J. Fulton, Deputy." The court refused to allow this to be read to the jury, to which defendant excepted. The defendant offered to prove that he had paid one W. H. Booth to procure him a divorce from his first wife, Ida Russell, and that a fraud had been practiced upon him, by which he was induced to believe, and did believe, at the time of his second marriage, that he had been divorced from his first wife; all which the court refused to allow. It also refused to allow proof of defendant's good character,—to all which he excepted. The court refused instructions in keeping with and based upon the theory in his (defendant's) offer of evidence to show that he believed, when he was married the second time, he had been divorced from his first wife; to which the defendant excepted. The court then read to the jury the statute on bigamy, and gave the following instructions: "All law, independent of evidence, is in favor of innocence, and the guilt of the accused must be fully proved, and in so doing the jury will take into consideration all of the facts in the case, and, arriving at your verdict, you must take into consideration the manner and demeanor of the witness on the stand as to the willingness or unwillingness in testifying one way or the other; and, after weighing his testimony, you may believe it in whole or in part, or you may disbelieve it in whole or in part, or you may give it just such weight as you think it entitled to. Upon the whole case, if you entertain a reasonable doubt as to the defendant's guilt, you should give him the benefit of the doubt, and acquit him; it being the burden of the State to prove beyond a reasonable doubt the guilt of the prisoner. If you believe that the defendant is guilty of bigamy, it will be your duty to say so: 'We, the jury, find the defendant guilty, and assess his punishment in the State penitentiary for a period of' not less than three years or more than seven. If you have a reasonable doubt as to his guilt, you will find him not guilty. The burden is on the State to prove beyond a reasonable doubt all the material allegations in the indictment." To the ruling and judgment of the court in giving these instructions the defendant excepted.

Section 1480, Sand. & H. Dig. provides: "Every person having a wife or husband living, who shall marry any other person, whether married or single, except in the cases specified in the next section, shall be adjudged guilty of bigamy.

"Sec. 1481. The last preceding section shall not extend to the following persons or cases:

"(1) To any person, by reason of any former marriage, whose wife or husband by such marriage shall have been absent for five successive years, without being known to such person within that time, to be living.

"(2) To any person whose wife or husband has been absent from the United States for the space of five years.

"(3) To any person whose former marriage has been dissolved by a court of competent authority.

"(4) To any person whose former marriage has been pronounced void by the decree or sentence of a court of competent authority, on the ground of the nullity of the marriage contract.

"(5) To any person by reason of any former marriage contract by such person, within the age

of legal consent, and which has been annulled by a decree of a court of competent authority."

Section 1482 provtdes that: "If any person shall knowingly marry the husband or wife of another, in any case in which said husband or wife would be punished according to the foregoing provisions, such person, on conviction, shall be subject to the same punishment as is prescribed in cases of bigamy."

We find that the rulings of the court were correct in refusing to allow proof that the defendant believed he had been divorced from his first wife at the time of his second marriage, as this was no defense.

The cases cited by the attorney-general in his brief sustain the ruling of the court upon this question. These cases are to the effect that: "The material facts of the crime of bigamy are the first and second marriages, and the fact that the first consort was alive and undivorced at the date of the void marriage. From such facts a bigamous intent may be inferred." Underh. Ev. § 398. That defendant had been told and believed that his first marriage was void, and acted on such belief, is no defense to a prosecution for bigamy. State v. Sherwood, 68 Vt. 414, 35 Atl. Rep. 352. An honest and reasonable belief in the death of a former wife is no defense to a prosecution for bigamy. Com. v. Hayden (Mass.), 40 N. E. Rep. 846. It is the marrying, by a person who has a husband or wife living, that constitutes the offense under our statute; and the offense is complete upon the second marriage. Scoggins v. State, 32 Ark. 205. Advice of counsel that there is no impediment to the second marriage is no defense to a prosecution for bigamy. People v. Weed, 29 Hun, 628; State v. Hughes, 58 Iowa, 165, 11 N. W. Rep. 706. To support an indictment for bigamy, it is sufficient to prove that defendant, being at the time lawfully married to one person, has married another. Com. v. Mash, 7 Metc. (Mass.) 472. In State v. Armington, 25 Minn. 29, the facts, briefly stated, were as follows: Armington was indicted in Minnesota for bigamy. He offered in evidence a certified copy of a decree of divorce between him and his first wife. This divorce was obtained in Utah. Counsel for the State objected to its admission, on the ground that at the time both parties were residents of Minnesota. The objection was sustained. Counsel for the defendant then offered to show by the paper and parol testimony of defendant that at the time of the second marriage he had this paper in his possession, and believed the decree to be effectual to make him a single man, and believed himself to be such, and that he would not have married again had he not believed such; and he had submitted the paper to a good attorney in this State, and had been advised that the paper was sufficient; and had married relying on such advice, and a copy of the decree, believing that he had a right to. All of this evidence was excluded, and on appeal to the supreme court that tribunal said: "To disprove any criminal intent, the record was also offered in evidence, coupled with an offer to show that the defendant, acting under the advice of counsel, believed in the validity of such alleged divorce, and that he contracted his second marriage in this belief." And again, the court said: "If the pretended decree upon which he relies was in fact illegal and void, because made by a court having no jurisdiction, it affords him no protection against the consequences of a second marriage, whatever may have been his motives or his belief in respect to the validity of the decree." We think the evidence offered by the defendant affecting his intention and good faith in his second marriage was competent, not to show that he was not guilty, but because it might have affected the term of his imprisonment. But, as defendant was given the lightest punishment fixed by the statute, its refusal is not reversible error. Affirmed.

NOTE.—*Recent Decisions on Indictment for and Evidence of Bigamy.*—Under Civil Code, sec. 82, declaring that the marriage of one below the age of consent can only be annulled by that party, and that, if he or she freely cohabit with the other after attaining the age of consent, the marriage is valid, one who has married a girl below the age of consent cannot, after remarrying, plead that fact to the charge of bigamy. People v. Beevers (Cal.), 99 Cal. 286, 33 Pac. Rep. 844. A marriage by consent, followed by "a mutual assumption of marital rights, duties, or obligations," as described in Civil Code, sec. 55, is as sufficient a basis for a prosecution for bigamy as one by covenant, "followed by a solemnization." People v. Beevers (Cal.), 99 Cal. 286, 33 Pac. Rep. 844. An indictment for bigamy charged that Prichard did marry one Eliza Ann S, and her then and there had for his wife, known by the name of Eliza Ann Prichard, and that said Joseph Prichard afterwards feloniously and unlawfully did marry and take to wife one, Virginia M. Lewis, "the said Joseph Ferguson Prichard well knowing the said Eliza Ann Ferguson, his former wife, was then alive." Held, that the indictment did not sufficiently allege that the former wife was living at the time of the second marriage. Prichard v. People (Ill. Sup.), 36 N. E. Rep. 103. Under Code Crim. Proc. sec. 395, providing that the fact that a crime has been committed cannot be proved by the oral admission or confession of accused made out of court, an indictment for bigamy will be set aside where the only evidence of a prior marriage consists of verbal statements made by defendant out of court. People v. Edwards (O. & T.), 25 N. Y. S. 480. An honest and reasonable belief in the death of a former wife or husband is not a defense to a prosecution for bigamy. Commonwealth v. Hayden (Mass.), 40 N. E. Rep. 486. An indictment for bigamy, which charges that the defendant did unlawfully and feloniously marry G, "the said L, said former wife, being then alive," sufficiently alleges that the first wife was alive at the time of the second marriage. Hiler v. People (Ill. Sup.), 41 N. E. Rep. 181. Evidence showing that defendant left his first wife a few days after the marriage, and that she was then alive, supplemented by the uncontradicted testimony of her father that defendant told him that he knew that the first wife was alive when he married the second, sufficiently shows that defendant knew she was alive at he time of the second marriage. Crane v. State, 94 Tenn. 86, 98, 23 S. W. Rep. 317. On a prosecution for bigamy, the record of defendant's second marriage,

and evidence of his cohabitation with the woman named therein as her husband from that time on, are admissible as tending to identify defendant with the person named in the marriage record. Johnson v. State, 60 Ark. 308, 30 S. W. Rep. 31. On a trial for bigamy, a letter purporting to be written and signed by defendant, and identified as his handwriting, and addressed to his mother-in-law, is competent against him. Commonwealth v. Hayden (Mass.), 40 N. E. Rep. 846. Under Mill. & V. Code, sec. 5651, providing that on trial for bigamy, in the absence of a certified copy of the first marriage license, a "public acknowledgment" by the party charged shall be competent evidence of the first marriage, the acknowledgment need not be before a court or public tribunal, but may be made by a confession, or by conduct in the presence of others. Crane v. State, 94 Tenn. 86, 98, 23 S. W. Rep. 317. Proof of the first marriage by the testimony of witnesses of the ceremony, testimony by the aunt of the first wife tending to show cohabitation, and testimony by the first wife's father, showing that defendant had confessed to him that he knew she was alive when he married again, is, in the absence of evidence impeaching the regularity of the marriage or in any way explaining it, sufficient proof of such marriage and of its validity to support a conviction. Crane v. State, 94 Tenn. 86, 98, 28 S. W. Rep. 317. On a prosecution for bigamy, a petition for divorce filed by defendant against the alleged former spouse, alleging a marriage between them, is admissible to prove the former marriage. Adkisson v. State (Tex. Cr. App.), 30 S. W. Rep. 357. On a prosecution for bigamy, evidence of reputation is not sufficient to prove the former marriage. Adkisson v. State (Tex. Cr. App.), 30 S. W. Rep. 357. An indictment under Pub. St. ch. 244, sec. 1, providing that every person who shall be convicted of being married to another, or of cohabiting with another as husband and wife, having at the time a former husband or wife living, shall be imprisoned, etc., failing to allege the existence of a second marriage, is fatally defective. *In re* Watson (R. I.), 33 Atl. Rep. 873. Gen. St. ch. 22, sec. 127, provides that bigamy consists of having two wives or two husbands at the same time, knowing that the former husband or wife is still alive, and that nothing contained in the section shall extend to any person or persons whose husband and wife shall have been continually absent from such person or persons for five years prior to the second marriage, and he or she not knowing such husband or wife to be living within that time, or to any divorced person, or to any person where the former marriage has been declared void. Held, that it was no defense that defendant believed that his first marriage had been annulled by agreement with his wife. State v. Zichfeld, 46 Pac. Rep. 802, 34 L. R. A. 784. That defendant had been told and believed that his first marriage was void, and acted on such belief, is no defense on a prosecution for bigamy. State v. Sherwood, 68 Vt. 414, 35 Atl. Rep. 352. An indictment for bigamy, alleging that defendant, at a certain time and place, "unlawfully and feloniously did marry and take to wife one M, and to her, the said M, was then and there married, he, the said (defendant), then and there having a wife living, to-wit, J, against the peace," etc., sufficiently alleged that defendant had a lawful wife living at the time of the second marriage, and charged an offense. State v. Jenkins (Mo. Sup.), 41 S. W. Rep. 220. An indictment for bigamy need not negative the exception in Rev. St. 1889, sec. 3791, to the effect that the second marriage does not render defendant guilty, where the former spouse has been absent for seven successive years, without being known to defendant to be living. State v. Jenkins (Mo. Sup.), 41 S. W. Rep. 220. An indictment for bigamy need not contain an averment that defendant had not been divorced from his first wife. State v. Melton (N. Car.), 120 N. Car. 591, 26 S. E. Rep. 933. An indictment for bigamy charging "that one M, in ——, on ——, did unlawfully marry B, she, the said M, then and there having a husband then living," is insufficient, under Pen. Code 1895, art. 344, punishing any person who, having a former wife or husband living, shall marry another, as it fails to allege a former marriage, or that her "husband then living" was a "former husband." McAfee v. State (Tex. Cr. App.), 41 S. W. Rep. 627. An averment charging defendant with having two women, named, "as and for wives at one and the same time," is sufficient. State v. Sherwood, 68 Vt. 414, 35 Atl. Rep. 352. The State, in a prosecution for bigamy, is not bound to prove that the defendant has not been divorced from his first wife. Hanley v. State, 12 Ohio Cir. Ct. Rep. 584, 1 O. C. D. 488. The admission by defendant of his former marriage is competent evidence against him. State v. Melton, 120 N. Car. 591, 26 S. E. Rep. 933. The original marriage license signed by the justice solemnizing the same is admissible to prove the marriage, though the attesting witnesses are not present. State v. Melton (N. Car.), 120 N. Car. 591, 26 S. E. Rep. 933. To establish the former marriage of one on trial for bigamy, where it is not claimed that such former marriage was in conformity with the statute, the same circumstances are admissible in evidence as are admissible to establish the same kind of a marriage in a civil case; and such circumstances may not be sufficient to exclude all reasonable doubt. Swartz v. State, 13 Ohio Cir. Ct. Rep. 62, 7 Ohio Dec. 43. While a presumptive marriage, based on cohabitation and repute, cannot be established to defeat a subsequent marriage in fact, yet cohabitation and reputed marriage are facts receivable in proof of a marriage in fact, and a man charged with bigamy is entitled to show that the woman to whom he was first married had previously claimed, and was reputed, to be married to another man, with whom she lived and cohabited for a number of years, and who was still living at the time of her marriage to defendant, as evidence in support of his claim that his first marriage was void. State v. Sherwood (Vt.), 68 Vt. 414, 35 Atl. Rep. 352. Evidence, on a prosecution for bigamy, that defendant lived with a woman as his wife, and held her out to the world as such; that children were born to them; and that, after he had deserted her, he admitted the marriage, but claimed to have obtained a divorce, was sufficient to show a former marriage, without evidence of a witness to the ceremony. State v. Jenkins (Mo. Sup.), 41 S. W. Rep. 220. Where a witness testified that defendant had been married to his first wife for 39 years, and had admitted two years before the trial that he had another wife living, and the defendant had testified on the preliminary examination to such first marriage while he and his first wife were slaves, an instruction to find for defendant was properly refused. State v. Melton, 120 N. Car. 591, 26 S. E. Rep. 933. Under the last clause of Cr. Code 1896, sec. 4406, which in its entirety provides that "if any person having a former husband or wife living marries another, or continues to cohabit with such second husband or wife in this State, he or she must, on conviction, be imprisoned," etc., it is unnecessary, to constitute the crime of bigamy, that sexual intercourse should continue during the whole time the parties live together, but the crime is committed

when they live under the same roof, and acknowledge each other as husband and wife, although they are prevented, by incapacity, from committing the carnal act. Cox v. State, 23 South. Rep. 806. Pub. St. R. I., ch. 244, sec. 1, provides that one convicted of being married to another, etc., having at the same time a former husband or wife living, shall be imprisoned, etc.; provided, that this shall not extend to any person whose husband or wife shall be continually remaining without the State seven years together (the party being married after the expiration of said seven years, not knowing the other to be living within that time), nor to any person divorced, nor to any person by reason of prior marriage made when the man was less than 14 and the woman less than 12 years old. Held, that the exceptions need not be negatived by an indictment for bigamy. State v. Gallagher, 38 Atl. Rep. 655. Under Rev. St. ch. 38, sec. 29, providing that, in a prosecution for bigamy, either of the marriages may be proved by such evidence as is admissible to prove marriages in other cases, a conviction of bigamy may be sustained where the only evidence of the first marriage is proof of cohabitation as man and wife, and defendant's admissions of a marriage. Lowery v. People, 172 Ill. 466, 50 N. E. Rep. 165. On a prosecution for bigamy the admissions of defendant are competent evidence of his former marriage. State v. Gallagher, 38 Atl. Rep. 655.

CORRESPONDENCE.

EVIDENCE OF EXCLAMATIONS WHILE ASLEEP.

To the Editor of the Central Law Journal:

Referring to your article in issue of 31st of March last, commenting on the case of Plummer v. Ricker, decided recently by the Supreme Court of Vermont, are you not in error in saying the supreme court sustained the lower court in admitting evidence of exclamations while asleep under the circumstances of that case? As I read your citation from the opinion of the court, I should say they held just the contrary views. Is it an error in statement, or is my comprehension at fault?

JESSE ARTHUR.

ANSWER.

Yes, we were in error. The supreme court, reversing the trial court, held the evidence inadmissible.

ED. C. L. J.

BOOK REVIEWS.

ABBOTT'S FORMS OF PLEADING.

The original title of the work, of which, published in 1887, this is, in effect, a new edition, was "Abbott's New Practice and Forms." The present volumes treat the subject of pleading only. It is a comprehensive work on the forms of pleading in actions for legal or equitable relief, prepared with especial reference to the codes of procedure of the various States, and adopted to the present practice in many common law States. When this is said little else need be stated, for its value and usefulness to practitioners in all jurisdictions will be readily seen. It contains accurate and valuable drafts of pleadings and papers demanded in every character of action which is known to courts. In this regard, the author states that he has "sought to place in the hands of the active practitioner a collection of forms of pleading of recognized standing, or sustained by actual adjudication, so comprehensive in selection that he will find a precedent substantially 'on all fours,' whatever be his need." As to merit, it need only be said that it is fully up to the standard of all the earlier works of a similar character with which the name of Austin Abbott, one of the ablest and best known of legal authors, is associated. The preparation of this work was begun, and most of the material cases completed, before his death, but after his decease it was arranged for publication by Carlos C. Allen, professor of pleading in the law department of the New York University. The work is in two large volumes, the first of which only has yet been issued. Published by Baker, Voorhis & Co., New York.

DENIS ON CONTRACT OF PLEDGE.

The object of this work, as stated by the author, is to arrive at a better knowledge and understanding of the law of pledge of the common law by comparing it with the law of pledge of the civil law from which it descends. The comparative study of scientific subjects is always profitable, whether it is that of comparative anatomy or that of comparative jurisprudence. Both Judge Story and Mr. Schouler, in their treatises on Pledges, recognized the relative obscurity and uncertainty of the common law on that subject, and suggested that assistance could be derived for its better understanding from the knowledge of the civil law. The work has evidently been prepared with great care and much thought. It is, in fact, less of a digest and more of a philosophical discussion than most modern text books. At the same time there is not evident any lack of diligence in obtaining and citing authorities. The author is a prominent member of the New Orleans bar. The book contains about six hundred pages, beautifully printed and well bound. It also contains a collection of forms of pledges and a good index. Published by F. F. Hansell & Bro., New Orleans.

ASH'S ANNOTATED INTERNAL REVENUE LAWS.

While this work contains much that is applicable to the general system of internal revenue laws as it has existed for years, it has an added and special value in connection with the War Revenue Law of 1898, which finds comprehensive treatment in a special chapter. It is published by Baker, Voorhis & Co., New York.

HUMORS OF THE LAW.

That canny Scot had a very keen sense of the fitness of things, who, when asked if he had ever been in a court of justice, replied, "No, but I've been before the judge."

A farmer forwarded a letter to a town, inscribed, "To any respectable attorney." The postmaster returned it, indorsed, "None here."

Young Lawyer: "I spent nearly an hour yesterday trying to convince that client of mine he was innocent."

Old Lawyer: "Oh, well, never mind; you'll probably be able to convince the judge he's guilty in half the time."

"Talking about neckties," gayly remarked the Western sheriff, as he deftly arranged the noose "here's something that is perfectly killing."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ABATEMENT—Judgments.—Where a judgment is reversed and remanded for a new trial, it is vacated, and the cause of action restored to its original character, and is subject to abatement by the death of defendant, as though no judgment had ever been rendered.—HULLETT v. BAKER, Tenn., 49 S. W. Rep. 757.

2. ABATEMENT AND REVIVOR—Removal of Causes.—A right given by a State statute to revive a pending action for personal injuries in the name of the personal representative is not lost on the removal of the case to a federal court, even when, by the State law, the cause of action would have abated if no action had been commenced before the plaintiff's death. The federal law declaring that the right of revivor exists only when the "cause of action" survives (Rev. St. § 955), does not apply to such a case.—BALTIMORE & O. R. CO. v. JOY, U. S. S. C., 19 S. C. Rep. 388.

3. ACCIDENT INSURANCE—Intentional Injuries.—An insured's death results from intentional injuries inflicted by another, within an accident policy excepting death resulting from "intentional injuries inflicted by insured or any other person," though the injuries were unintentional on insured's part.—ORR v. TRAVELERS' INS. CO., Ala., 24 South. Rep. 997.

4. ACCORD AND SATISFACTION—What Constitutes.—A creditor agreed to accept certain property, and the promise of the debtor to do a certain act in the future, in satisfaction of the debt. The promise was made, and the property delivered to the creditor, and he told the debtor that he would instruct his wife to deliver the notes evidencing the debt to the debtor whenever he should call. The wife delivered only one of the notes, the others having been pledged by the creditor. Held, that the accord was executed and the notes were satisfied.—SMITH v. ELROD, Ala., 24 South. Rep. 994.

5. ADMINISTRATION—Debts of Estate—Following Assets.—The assets of an estate are generally a trust fund for the payment of its debts, and may be followed, in equity, for that purpose, in the courts of the United States, into the hands of distributees.—CAREY v. ROOSEVELT, U. S. C. C., S. D. (N. Y.), 91 Fed. Rep. 567.

6. ATTACHMENT—Illegal Levy—Damages.—Where a levy of attachment is made on the goods of a third person, the measure of damages is their value at the time of the seizure, with 6 per cent. interest, and such damages cannot be diminished by an allowance for the costs of the unlawful sale.—PERKINS v. EWAN, Ark., 49 S. W. Rep. 569.

7. ASSIGNMENT FOR BENEFIT OF CREDITORS—Preferences.—The burden is on an attaching creditor, attacking an assignment for the benefit of preferred creditors, to show that such assignment was executed to defraud and delay other creditors.—ROYSTER v. STALLINGS, N. Car., 32 S. E. Rep. 384.

8. ATTORNEY AND CLIENT—Champerty.—A contract between attorney and client for a contingent fee is not invalid, the English statutes of champerty never having been in force in Texas.—WHEELER v. RIVIERE, Tex., 49 S. W. Rep. 697.

9. BAIL—Validity of Bond.—Where accused is required to execute a bond for a sum greater than that fixed in the order admitting him to bail, the bond is void.—COMMONWEALTH v. RIFFE, Ky., 49 S. W. Rep. 772.

10. BANKRUPTCY—Acts of Bankruptcy—Suffering Attachment.—Under Bankruptcy Act 1898, § 3, an insolvent debtor commits an act of bankruptcy by suffering or permitting a creditor to obtain a preference through legal proceedings, if he fails to discharge an attachment levied by such creditor on his stock of goods, and allows a sale to be made thereunder. It is not necessary that the debtor should procure, or actively participate in, the bringing of the attachment suit.—IN RE REICHMAN, U. S. D. C., E. D. (Mo.), 91 Fed. Rep. 624.

11. BANKRUPTCY—Acts of Bankruptcy by Corporation.—Under the laws of Massachusetts defining and limiting the powers of the officers and directors of manufacturing corporations, a written admission, by the directors of such a corporation, that the company is unable to pay its debts, and is willing to be adjudged a bankrupt on that ground, is in excess of their authority, and therefore does not constitute an act of bankruptcy by the corporation on which involuntary proceedings against it may be founded.—IN RE BATES MACH. CO., U. S. D. C., D. (Mass.), 91 Fed. Rep. 625.

12. BANKRUPTCY—Commencement of Proceedings.—The bankrupts made a voluntary assignment in favor of their creditors on July 18, 1898; on November 2d following, less than four months thereafter, a petition was filed against them on that ground, and a subpœna desired for service. The clerk did not issue the subpœna, because the court had directed that no further proceedings should be had until the supreme court had promulgated "the necessary rules, forms and orders," as required by section 30 of the act. When those rules were promulgated, the subpœna was at once issued on December 9th, and served. This was more than four months after the assignment. Held, that the proceedings were commenced by the filing of the petition, and that the delay in issuing the subpœna, as stated, did not vitiate the proceeding or validate the assignment of July 18th.—IN RE LEWIS, U. S. D. C., S. D. (N. Y.), 91 Fed. Rep. 682.

13. BANKRUPTCY — Corporation — Admission of Insolvency.—Where the defendant corporation shut down its manufacturing works and ceased all business at Warren, R. I., in June, 1898, but continued its business in New York, where all its executive and banking business had been done, until the petition was filed in November following, held, that New York was its principal place of business during the preceding six months, and that the petition was properly filed in this district; held also that an admission of insolvency and willingness to be adjudicated a bankrupt, as stated in several letters to creditors, signed by the president of the corporation and authorized by a meeting of a majority of the board of directors, was sufficient to uphold a petition and to warrant an adjudication in bankruptcy, although three nominal directors of the corporation were not notified of the meeting; it appearing that they had never taken any part in the meetings of the directors, nor given any attention to its affairs, and were prosecuting suits against the corporation under which they had attached the principal part of its property.—IN RE MARINE MACHINE & CONVEYOR CO., U. S. D. C., S. D. (N. Y.), 91 Fed. Rep. 680.

14. BANKRUPTCY—Examination of Bankrupt.—Under subdivision 9 of section 7 of the bankrupt act, it is proper that an examination of the bankrupt should be had in behalf of creditors, to enable them to prepare specifications opposing his discharge; section 58 requires that all creditors shall have (10) ten days' notice of such an examination, which should, therefore, be

open to all creditors and ordinarily be had once for all; to avoid extra expense and delay, the notice to creditors to attend in opposition to the discharge, should embrace also a notice of the examination of the bankrupt; such examination should also be at the expense of creditors, as respects any clerical or stenographic aid in taking notes.—IN RE PRICE, U. S. D. C., S. D. (N. Y.), 91 Fed. Rep. 635.

15. BANKRUPTCY—Jurisdiction of District Court—Replevin.—Under the Bankruptcy Act of 1898 (30 Stat. 552), a federal district court has no jurisdiction of an action of replevin, brought by a receiver or trustee in bankruptcy, to recover the possession of personal property alleged to belong to the bankrupt, but held adversely by the defendant under a claim of title thereto.—MITCHELL V. MCCLURE, U. S. D. C., W. D. (Penn.), 91 Fed. Rep. 621.

16. BILLS AND NOTES—Collateral.—When it appears that the note sued on was deposited as collateral to secure the payment of a sum of money for which the depositor was indebted, and with such collateral there were also deposited certain rent notes, to secure the payment of the collateral note, and that the holder of the latter had received from the rent notes and other sources a sufficient amount to discharge the collateral note, it will be held to have been paid, and the sureties thereon discharged from further liability.—G. OBER & SONS CO. V. DRANE, Ga., 32 S. E. Rep. 871.

17. BILLS AND NOTES—Execution—Fraud.—When a sane person knowingly and without constraint delivers to another, for value, his obligation in writing, for the doing or the forbearance of an act, he cannot afterwards say that he was deceived, and that by reason thereof, and of illiteracy, he did not know the purport of the instrument.—HURT V. WALLACE, Tex., 49 S. W. Rep. 675.

18. BILLS AND NOTES—Indorsement for Collection.—Where a bank to which a lien note was indorsed "for collection" assigned it to one who paid it for the obligor, the assignee acquired no title, and therefore had no right to enforce the lien to the prejudice of a lien held by the creditor to secure other notes.—GASKILL V. HUFFAKER, Ky., 49 S. W. Rep. 770.

19. BUILDING AND LOAN ASSOCIATIONS.—In an action by a borrowing stockholder of a building association to enjoin it from foreclosing a mortgage, a special finding that plaintiff did not purchase his shares as an investment, but merely to obtain a loan, does not require the application of the amounts paid thereon as a credit on the principal debt as illegal interest, since it does not of itself show that the purchase of the stock was a mere cover for usury.—LEARY V. PEOPLE'S BLDG., LOAN & SAV. ASSN., Tex., 49 S. W. Rep. 632.

20. CHATTEL MORTGAGES — Foreclosure.—Where a chattel mortgage was given to secure a note, and afterwards a real estate mortgage was given as additional security, the district court of the county wherein the note was payable had jurisdiction to foreclose the security, regardless of the location of the real estate.—SPIKES V. BROWN, Tex., 49 S. W. Rep. 725.

21. CONSTITUTIONAL LAW—Due Process — Special Assessments.—In a suit to enjoin a special assessment on city lots, a mere allegation that the amount of the tax on each lot is greater than the value of the lot, and that defendant is seeking to compel complainant to pay the full amount of the tax, regardless of the value of the lots, is not sufficient to raise the question of the taking of property without due process of law, contrary to the federal constitution.—DEWEY V. CITY OF DES MOINES, U. S. S. C., 19 S. C. Rep. 879.

22. CONSTITUTIONAL LAW — Municipal Corporations—Taxation.—Before a statute, especially one relating to taxation, should be held to be not subject to amendment or repeal, an intent not to amend or repeal must be so directly and unmistakably expressed as to leave no room for doubt. It is not so expressed when the existence of the intent arises only from inference or conjecture.—CITY OF COVINGTON V. COMMONWEALTH OF KENTUCKY, U. S. S. C., 19 S. C. Rep. 383.

23. CONSTITUTIONAL LAW—Quarantine—Diseased Animals.—Rev. St. 1895, tit. 102, ch. 7, giving the live stock sanitary commission authority to prohibit the importation of cattle into the State on the ground that infectious disease has broken out among the cattle of such other State, is not unconstitutional as an interference with interstate commerce.—ST. LOUIS S. W. RY. CO. OF TEXAS V. SMITH, Tex., 49 S. W. Rep. 627.

24. CONSTITUTIONAL LAW—Right to Jury Trial.—Shannon's Code, § 5841, providing that the additional cost of a special jury shall be taxed to the losing party, is contrary to Const. art. 1, § 6, providing that the right of trial by jury shall remain inviolate, and Const. U. S. Amend. art. 7, providing that such right shall be preserved, since it destroys the impartiality of the jury, by holding out an inducement to find for the insolvent party where the other is solvent.—GRIBBLE V. WILSON, Tenn., 49 S. W. Rep. 786.

25. CONTRACT UNDER SEAL — Enforcement—Parties.—None but the parties to a sealed contract can enforce it, though it be made for the benefit of others.—WOONSOCKET RUBBER CO. V. BANIGAN, R. I., 42 Atl. Rep. 512.

26. CORPORATIONS—Excessive Indebtedness.—Under Code Iowa, § 1611, requiring that articles of incorporation shall fix a maximum of indebtedness to which the corporation "is at any time to be subject," a *bona fide* indebtedness in excess of such limitation is not void, but only gives rise to a right on the part of the State to proceed against the corporation or its officers for violating the statute.—SIOUX CITY TERMINAL RAILROAD & WAREHOUSE CO. V. TRUST CO. OF NORTH AMERICA, U. S. S. C., 19 S. C. Rep. 341.

27. CORPORATION—Foreign Corporations—Service of Process.—Rev. St. Ariz. 1887, § 848, requiring foreign corporations proposing to do business in the territory to file with certain territorial and county officers the appointment of an agent upon whom process "may be served," and sections 712 and 713, providing for service on such corporations by publication, are not exclusive, and are only designed to secure a special mode of service, when the corporation has ceased to do business in the territory, or has not appointed such local agent; and, when a foreign corporation has officers in the territory carrying on its business there, service may be made under section 704, which provides for service of summons on corporations generally, by leaving a copy with specified officers, or with a local agent, etc.—HENRIETTA MINING & MILLING CO. V. JOHNSON, U. S. S. C., 19 S. C. Rep. 402.

28. CORPORATIONS—Receiver — Right to Sue Chose in Action.—A receiver of a corporation, empowered by the decree appointing him to sue for and collect its assets, may sue in his own name a chose in action payable to the corporation.—EVANS V. PEASE, R. I., 42 Atl. Rep. 506.

29. COUNTIES—Loans—Waiver of Defense.—A county sued on a note, which makes no defense thereto, but sets up a counterclaim, cannot, after verdict, for the first time, on rule for new trial, contend that the note constituted an increase of its indebtedness, and therefore was void for want of the statement required by Act April 20, 1874, § 2 (P. L. 65).—SAFE-DEPOSIT BANK OF POTTSVILLE V. SCHUYLKILL COUNTY, Penn., 42 Atl. Rep. 539.

30. COUNTY BONDS—Innocent Purchasers—Recitals.—A recital in county bonds that the total amount of the issue does not exceed the constitutional limit of indebtedness, taken in connection with the fact that the bonds do not show on their face the amount of the issue, estops the county, as against an innocent purchaser, from disputing the truth of the recital.—BOARD OF COMRS. OF GUNNISON COUNTY, COLO., V. E. H. ROLLINS & SONS, U. S. S. C., 19 S. C. Rep. 390.

31. CREDITORS' BILL—Abatement.—Where no lien has been created on property claimed to have been conveyed to the wife of a judgment debtor in fraud of his creditors, all proceedings on a creditors' bill in aid of execution, to subject such property to the payment of

the judgment, abate on the death of the judgment debtor.—BEITH v. PORTER, Mich., 78 N. W. Rep. 336.

32. CRIMINAL LAW—Bigamy—Common-law Marriages.—Where a married person contracts a common-law marriage lacking the formalities prescribed by statute for the solemnization of marriages, it is bigamy.—PEOPLE v. MENDENHALL, Mich., 78 N. W. Rep. 325.

33. CRIMINAL LAW—Instructions.—In a criminal case, whether request be made or not, the court must charge as to the nature of the offense, and the general principles of law essential to a conviction, under Code, § 413, requiring the court to declare and explain to the jury the law arising on the evidence.—STATE v. FULFORD, N. Car., 32 S. E. Rep. 377.

34. CRIMINAL PRACTICE — Indictment—Form.—An indictment should not be quashed when it concludes with the words "against the peace and dignity of the same State aforesaid," instead of the words "against the peace and dignity of the State," as required by Const. art. 5, § 31, as the additional words may be regarded as surplusage.—STATE v. MASON, S. Car., 32 S. E. Rep. 357.

35. CORPORATIONS—Liability of Stockholders — Kansas Statute.—Gen. St. Kan. 1889, par. 1204, gives creditors of a dissolved Kansas corporation a right of action for their debts against the stockholders, and further provides that stockholders from whom a debt of the corporation is so collected shall have an action against all other stockholders for contribution, and, in case any stockholder shall not have sufficient property to satisfy his portion of an execution issued on a judgment in such action, "the deficiency shall be divided equally among the remaining stockholders." Held that, construing said section in connection with the other provisions of the statute, the word "equally," as used therein, does not mean that each of the other stockholders shall pay an equal amount of such deficiency, but an amount in proportion to his stock.—KISSEBERTH v. PRESCOTT, U. S. C. C., D. (Mass.), 91 Fed. Rep. 611.

36. DEED—Violation of Trust—Action by Remainderman.—Land was conveyed in trust for the benefit of the grantor's daughter for life, remainder to certain of her issue, with power to sell and invest the proceeds in property to be held in the same manner. Held, that the conveyance by the trustee, though in violation of the trust, vested the legal title in his grantees.—ROBINSON v. PIERCE, Ala., 24 South. Rep. 984.

37. EASEMENTS—Acquirement — Obstruction.—Where one party has a right of way through land of another, to a public road, the latter is not justified in closing it by the fact that there is another way to such road.—MANBECK v. JONES, Penn., 42 Atl. Rep. 536.

38. EQUITY—Dismissal—Answer.—A complainant cannot affect a dismissal of an answer filed as a cross-complaint, and terminate the controversy raised thereby, by dismissing his original bill, after he had replied to the matters alleged in the cross-bill, and proof had been taken on the issues presented.—PARTEE v. GOLDBERG, Tenn., 49 S. W. Rep. 758.

39. ESTOPPEL—Garnishment Proceedings — Effect on Subsequent Creditors' Bill.—The garnishment of a city treasurer under a judgment against the school board of the city, as to taxes collected by the city for the school district, and the payment and receipt of the sum shown to be due by the garnishee's answer, does not estop the judgment creditor from maintaining a creditors' bill against the city for an accounting with the school district as to such taxes.—CITY OF NEW ORLEANS v. FISHER, U. S. C. C. of App., Fifth Circuit, 91 Fed. Rep. 574.

40. ESTOPPEL IN PAIS.—One who makes a promise without consideration is not estopped to repudiate it, where the promisee does not act in reliance on it.—OLIVER v. COLLINS, Tex., 49 S. W. Rep. 682.

41. EXECUTION — Supplementary Proceedings — Receiver.—2 How. Ann. St. § 6614, authorizing the maintenance of a bill in chancery on a judgment on which execution has been returned unsatisfied, for the discovery of property of the judgment debtor, and section 6615, empowering the court to decree satisfaction of the judgment out of the judgment debtor's unexempt property, give the court no power to require a judgment debtor to transfer exempt property to a receiver in supplementary proceedings.—REMICK v. BRADLEY, Mich., 78 N. W. Rep. 326.

42. EXECUTION SALE — Possession.—The direction by an execution defendant to the sheriff to sell land in another county, and his subsequent recognition of the validity of such sale, amounted to an alienation of the equitable title, and was sufficient to put the purchaser at least in constructive possession, from which he could not be ousted by a junior in possession of no higher dignity.—SORRELL v. SAMUELS, Ky., 49 S. W. Rep. 762.

43. EVIDENCE—Declarations of Agent—Negligence.—In an action to recover for injuries through the breaking of an elevator cable, the declaration of the owner's agent that it was defective is inadmissible, not being within the scope of his employment.—HALL v. MURDOCK, Mich., 78 N. W. Rep. 329.

44. FEDERAL COURTS—Jurisdiction — Citizenship.—A circuit or district court is without jurisdiction of a suit brought on a non-negotiable contract by an assignee, where the declaration fails to show that the suit might have been prosecuted in that court if no assignment had been made; and a circuit court of appeals cannot entertain a writ of error to review a judgment in such case.—SMITH v. FIFIELD, U. S. C. C. of App., Seventh Circuit, 91 Fed. Rep. 561.

45. FEDERAL COURTS—Jurisdiction—Diverse Citizenship.—Under Judiciary Act 1887-88, § 1 (24 Stat. 552, ch. 373, 25 Stat. 433, ch. 866), a circuit court has jurisdiction, in a case of diverse citizenship, of an action by an assignee on a chose in action payable to bearer, and made by a corporation (in this case a municipal corporation), without regard to whether the assignor could have maintained the suit.—CITY OF NEW ORLEANS v. QUINLAN, U. S. S. C., 19 S. C. Rep. 829.

46. FRAUD — Discovery — Limitations.—A bill to set aside a mortgage by a wife averred that the husband induced her to sign it, representing it to be a lease only, and afterwards, on her discovery of the fraud, he told her it was all right, that the grantee was to hold the title for a specified time, and take rents to pay indebtedness of his, and would fix it all right for her. Held, that this sufficiently charged a concealed fraud in the procurement of the mortgage, within the statute of limitations.—IRVINE v. BURTON, Miss., 24 South. Rep. 962.

47. FRAUDS, STATUTE OF — Contract.—A contract not to again engage in the newspaper business in the town of G is possible of performance within a year by the death of the obligor within that time, and therefore not within the statute of frauds.—DICKEY v. DICKINSON, Ky., 49 S. W. Rep. 761.

48. FRAUDULENT ASSIGNMENT.—Where one ostensibly assigned all his wages due, or to become due up to a certain date, to his grocer, with whom he had an account, and made a contemporaneous secret agreement by which the grocer was to continue to furnish him with groceries, and give him $11 per month with which to pay his rent, and allow him from time to time such other sums as he needed out of his earnings, and apply the remainder to the old and running account, the assignment was fraudulent as to creditors, regardless of the intent of the parties thereto.—ROBINSON v. MCKENNA, R. I., 42 Atl. Rep. 510.

49. FRAUDULENT CONVEYANCE—Purchase by Creditor.—When a creditor purchases more goods from his failing debtor than are necessary to satisfy his claim, and for the excess pays cash or executes negotiable paper, he places himself in the same position as an ordinary purchaser having no claim to secure, and becomes a participant in the fraud of his vendee, if he is aware, or has reasonable grounds to believe, that his vendee contemplates a fraud.—DORRANCE v. MCALESTER, U. S. C. C. of App., Eighth Circuit, 91 Fed. Rep. 614.

50. GIFTS—Undue Influence — Presumptions.—There is no presumption that a gift by a parent to a child with whom she lives, and to whom she sustains peculiarly close relations, is procured by undue influence, though such child thereby obtains a larger share than that received by the heirs of another child. The burden of proof to show undue influence is upon the party attacking the validity of the gift.—TOWSON v. MOORE, U. S. S. C., 19 S. C. Rep. 332.

51. HABEAS CORPUS — Right to Writ.—After granting defendant a new trial, the court, without notice to his attorney, on the same day, at night, and on the last day of the term, had him brought into court, set aside the order for a new trial, and passed sentence; granting, at the same time, a 10-days order to file a statement of facts on appeal, notice of which was given. Held, that defendant was not deprived of his right to appeal, and if he was deprived of any jurisdictional right, or right going to the merits of his cause, it could be presented by affidavits on appeal, and hence he was not entitled to a writ of *habeas corpus* to review the proceeding.—EX PARTE MATTHEWS, Tex., 49 S. W. Rep. 623.

52. HOMESTEAD—Rural and Business.—Land does not lose its character of rural homestead by the fact that, after it is included within city limits, the owner plats part of it, and acknowledges and records the plat, where the city does not accept the plat, and no sales are made with reference thereto.—ATKINSON v. PHARES, Tex., 49 S. W. Rep. 653.

53. INSANE PERSONS — Illegal Commitment.—All persons who unite in the procurement of an illegal commitment for insanity are liable as for false imprisonment, though the statute fixes the responsibility for admission and detention in the asylum on the superintendent and trustees.—BACON v. BACON, Miss., 24 South. Rep. 968.

54. INSURANCE—Covenant to Keep Books.—A covenant by insured in the policy to keep books, and to keep them locked in a fire-proof safe at night, is without consideration and void.—MECHANICS' & TRADERS' INS. CO. v. FLOYD, Ky., 49 S. W. Rep. 548.

55. INSURANCE — False Proofs of Loss.—A business owned by married women was managed by their husbands as their agents. After a loss by fire, the husbands made out proofs of loss and swore to them, and the wives, who were unfamiliar with the business, without any investigation or knowledge as to the truth of the contents, swore they were correct. Held, that false statements in the proofs did not forfeit the policies, since the statements were not willfully false.—BOSTON MARINE INS. CO. v. SCALES, Tenn., 49 S. W. Rep. 743.

56. INSURANCE—Shifting Risk—Description and Location.—A fire policy described the location of the property as a building occupied as a store and dwelling. After issuance, the property was moved, and the risk was transferred by indorsement, describing the location as a dwelling house. A portion of it was used as a store. Held, that the policy was void, the transfer being equivalent to a new policy for the unexpired term on the new location.—GREENWICH INS. CO. OF CITY OF NEW YORK v. DOUGHERTY, N. J., 42 Atl. Rep. 485.

57. JUDGMENT—Satisfaction—Vacation.—Under Shannon's Code, § 4719, providing that the satisfaction of a judgment may be set aside if "no title" is obtained to property bought by the judgment creditor to satisfy it, a judgment creditor is not entitled to such relief where the debtor owned a life estate in the property sold, which the creditor acquired by the sale, though he believed he acquired the fee.—GONCE v. MCCOY, Tenn., 49 S. W. Rep. 754.

58. JUDGMENT BY DEFAULT — Vacation.—A party's mistaken belief that he had employed an attorney to take charge of the case does not entitle him to have a default judgment vacated, where the facts did not justify that belief.—AMES IRON WORKS v. CHINN, Tex., 49 S. W. Rep. 665.

59. JUDICIAL SALE—Judgments—Res Judicata—Rights Subsequently Acquired.—A decree finding that the proceedings of a judicial sale were so defective that no title was acquired by the purchaser is not *res judicata* of his rights, under deeds from the prior owner acquired subsequent to the decree, in another suit, though between the same parties and affecting the same property.—GORE v. GORE, Tenn., 49 S. W. Rep. 737.

60. LANDLORD AND TENANT — Expiration of Term.—Rev. St. 1893, § 1989, provides that, if a tenant holds over under a lease, the landlord may enter and claim possession, and, in case of refusal or resistance, may apply to a magistrate for relief. Held, that where a landlord seeking before a magistrate to eject his tenant alleges a demand for possession and refusal by the tenant, and the allegation is not denied, a judgment ejecting the tenant is proper, though the testimony does not show that the landlord entered and demanded possession, nor that the tenant refused a demand.—KELLAR v. PAGAN, S. Car., 32 S. E. Rep. 853.

61. LANDLORD AND TENANT — Lease — Assignment.—Mere assignment of a lease, and an acceptance of rent by the lessor from the lessee, do not preclude the lessor from maintaining an action of covenant against the lessee on his covenant to pay rent; it not appearing that the lessor was notified of the assignment, and accepted the assignee as lessee.—ADAMS v. BURKE, R. I., 42 Atl. Rep. 515.

62. LIFE INSURANCE—Monthly Premiums—Forfeiture—Waiver.—An insurer's practice of receiving monthly premiums after they are due is not a waiver of a condition of the policy requiring prompt payment of such premiums, where the receipts recite that the premiums were received on condition that the policy was not in force between the time the premium became due and the time it was paid.—BRYAN v. NAT. LIFE INS. ASSN., R. I., 42 Atl. Rep. 513.

63. LIMITATIONS AGAINST STATE—Adverse Possession.—Limitations do not run in favor of an adverse holder of land under color of title, as against the State.—ADLER v. PRESTWOOD, Ala., 24 South. Rep. 999.

64. MASTER AND SERVANT — Defective Appliances—Contributory Negligence.—Where a railroad employee was injured by the defects in a bumper beam, that negligence on the part of his fellow-servants concurred does not affect the liability of the master.—INTERNATIONAL & G. N. R. CO. v. ZAPP, Tex., 49 S. W. Rep. 673.

65. MASTER AND SERVANT—Injury to Employee—Contributory Negligence.—An experienced lineman, employed as a "trouble hunter," was shortly before the accident seen shaking out a cross in the wires, and was next found on the ground at the foot of the pole, unconscious and bleeding. There was a deep burn on his hand, and the autopsy showed he had received a severe electric shock, evidently from his creating a short circuit for the current through his body. Held, that the burden of showing due care being on plaintiff, suing for his death, and the hazardous nature of the occupation requiring the greatest care on his part, the jury was not warranted in finding he was not guilty of contributory negligence.—JUDGE v. NARRAGANSETT ELECTRIC LIGHTING CO., R. I., 42 Atl. Rep. 507.

66. MASTER AND SERVANT—Master's Duty to Instruct.—A street car company is not bound to instruct a conductor of nine years' experience, when taking out for the first time an open summer car, with a running board on the side, whereby it was extended nearer cars on the other track, of the danger of being struck by such cars while on such board.—FLETCHER v. PHILADELPHIA TRACTION CO., Penn., 42 Atl. Rep. 527.

67. MASTER AND SERVANT—Personal Injuries—Measure of Damages.—Where a corporation in whose service a workman is injured, in consideration of a release of all claims for damages, and an agreement to do such work as he is able, agrees to pay him certain wages and furnish him certain supplies, etc., so long as his disability

to do full work shall continue, but afterwards repudiates the obligation and assumes to finally discharge him from its service, he is not confined to successive actions for damages as the right to wages, etc., accrued under the contract, but may treat the contract as finally broken, and sue at once to recover all that he would have received in the future, as well as in the past, if the contract had been kept.—PIERCE v. TENNESSEE COAL, IRON & RAILROAD CO., U. S. S. C., 19 S. C. Rep. 335.

68. MASTER AND SERVANT—Railroads—Assumption of Risks.—In an action against a railroad company by an employee for injuries caused by the backing up of an engine against cars between which plaintiff was standing while assisting in making up a train, proof that certain other railroad companies had rules for the protection of employees, on the subject of ringing bells and giving signals by engineers when moving, or about to move, their engines, is inadmissible to show negligence on defendant's part in failing to have such rules; it must appear that the custom of providing such rules is a general one.—ST. LOUIS & S. F. R. CO. v. NELSON, Tex., 49 S. W. Rep. 710.

69. MORTGAGES—Foreclosure—Description.—A notice of sale under a trust deed which does not describe the lands otherwise than by referring to the pages of the record where the deed was recorded is insufficient, and a sale thereunder void.—YELLOWLY v. BEARDSLEY, Miss., 24 South. Rep. 973.

70. MUNICIPAL CORPORATIONS—Annexation of Territory—Officers.—One who had resided in territory annexed to a city for three years immediately preceding the annexation at once became eligible to a city office, under a provision of the city charter requiring a residence of three years in the city in order to render one eligible to office therein.—GIBSON v. WOOD, Ky., 49 S. W. Rep. 768.

71. MUNICIPAL CORPORATIONS—Bonds—Effect of Dissolution.—After a city, incorporated under the general laws of Texas, had issued certain negotiable bonds, *quo warranto* proceedings were instituted by the State, and the corporation was held invalid, and dissolved, as including territory not authorized by statute. Thereafter the city reincorporated, leaving out such territory. Held, that the validity of the bonds as an obligation of the city was not affected by the judgment of dissolution, nor the reincorporation with less territory.—CITY OF UVALDE v. SPIER, U. S. C. C. of App., Fifth Circuit, 91 Fed. Rep. 594.

72. MUNICIPAL CORPORATIONS—Change in Grade of Streets.—Where a railroad company raises the grade of a street through a contractor, pursuant to authority granted to it or to the contractor by a city acting under the power conferred by charter to alter the grade of streets, the city alone is liable to an abutter for damages resulting from the change.—DENISON & P. SUBURBAN RY. CO. v. JAMES, Tex., 49 S. W. Rep. 660.

73. MUNICIPAL CORPORATIONS — Water Company.—Const. § 163, providing that no water company "shall be permitted or authorized" to lay its pipes or mains under the streets of a city without the consent of the proper legislative body of such city being first obtained, but that "when charters have been heretofore granted conferring such rights, and work in good faith has been begun thereunder, the provisions of this section shall not apply," does not apply to a water company which had for many years been laying its pipes in the streets of a city without the city's consent, under authority conferred by its charter.—CITY OF LOUISVILLE v. LOUISVILLE WATER CO., Ky., 49 S. W. Rep. 766.

74. NATIONAL BANKS—Dividends to Secured Creditors.—A suit by a creditor of an insolvent national bank against the receiver thereof to recover money alleged to be due, on the theory that dividends had not been declared on the proper basis, involves the administration of the trust, and is, therefore, properly brought in equity.—MERRILL v. NATIONAL BANK OF JACKSONVILLE, U. S. S. C., 19 S. C. Rep. 361.

75. NATIONAL BANKS—Liability of Directors.—It is the duty of the directors of a national banking association to exercise a general supervision and control over its affairs, and they are required, in the performance of such duty, to act in good faith, with ordinary diligence and intelligence, the measure of the care required being a question of fact, under the particular circumstances of each case. While they cannot devest themselves of such duty of general supervision by committing it to the cashier, they may properly intrust him with all discretionary powers which appertain to the immediate management of the business, including the discounting of paper; and they are not liable for losses occurring through his malversations, unless their own proper care would have prevented such losses. Nor are they required to take measures of unusual precaution, when they have no reason to distrust the integrity or efficiency of the cashier or other employees.—WARNER v. PENOYER, U. S. C. C. of App., Second Circuit, 91 Fed. Rep. 587.

76. NATIONAL BANKS—State Taxation.—In Rev. St. § 5219, forbidding the States to tax shareholders in national banks at a higher rate than that imposed on "other moneyed capital," the quoted words refer only to capital which comes into competition with the business of national banks; and hence exemptions from taxation, however large, such as deposits in savings banks of moneys belonging to charitable institutions, which are exempted for reasons of public policy, and not as an unfriendly discrimination against investments in national bank shares, are not forbidden by the federal statute.—FIRST NAT. BANK OF WELLINGTON, OHIO, v. CHAPMAN, U. S. S. C., 19 S. C. Rep. 407.

77. NEGLIGENCE — Railroads — Contributory Negligence.—An instruction that, if a person injured at a crossing and the railroad company were both negligent, the jury should determine whose negligence was the proximate cause of the injury, and find for the plaintiff if they found that it was the negligence of the railroad company, is erroneous, as authorizing the jury to infer that a recovery could be had notwithstanding plaintiff's contributory negligence.—TEXAS MIDLAND R. R. v. TIDWELL, Tex., 49 S. W. Rep. 641.

78. NUISANCE — Obstruction of Streets—Estoppel.—Where the value of plaintiff's property, which was contiguous to certain public streets connecting it with the business part of the town, was depreciated in consequence of the obstruction of such streets by means of certain buildings and other erections placed therein by defendant, who owned the abutting premises, and where plaintiff in no manner acquiesced in or consented to the erection of such obstructions, his right to maintain an action for the abatement of such alleged nuisance was not prejudiced by reason of the fact that though he knew that the obstructions complained of were being so erected by defendant, and at a considerable expense, he made no formal protest in respect thereto, but remained silent until after their completion.—RICHARDSON v. LONE STAR SALT CO., Tex., 49 S. W. Rep. 647.

79. PARDON—Power of Governor.—Under Const. art. 3, § 1, vesting the supreme executive power in the governor, and section 6, providing that he shall have power to grant reprieves and pardons after conviction, except in cases of impeachment, the governor has the right to pardon a person committed for contempt.—SHARP v. STATE, Tenn., 49 S. W. Rep. 752.

80. PARTITION—Sale of Widow's Interest.—Where a widow has sold and conveyed her interest in, and has removed from, land which descended on the death of her husband to her and decedent's children as tenants in common, her grantee may not prevent partition thereof under Code 1892, § 1553, providing that such land shall not be subject to partition during the surviving wife's widowhood, unless she consents, so long as it is occupied or used by her.—MIDDLETON v. CLAUGHTON, Miss., 24 South. Rep. 963.

81. PARTNERSHIP.—Where a partner was first charged with the proceeds of notes discounted by him for the firm, and then charged with the balance left after pay-

ing certain debts of the firm, he should, on a settlement of the accounts, be credited by the amount of the first charge.—BALES v. FERRELL, Ky., 49 S. W. Rep. 759.

82. PARTNERSHIP — Contribution — Res Judicata.—A judgment against one defendant only in an action against several liable as partners, or otherwise jointly and severally liable, does not preclude him from compelling contribution on paying the judgment.—HOXIE v. FARMERS' & MECHANICS' NAT. BANK OF FT. WORTH, Tex., 49 S. W. Rep. 637.

83. PARTNERSHIP—Dormant Partner—Evidence.—One is not shown to be a dormant partner, so as to relieve him from liability for debts contracted after his withdrawal from the firm, without notice of dissolution being given, though there is evidence he had not talked to customers or sold goods, and that his name did not appear on the sign cards or letter heads, where there is no evidence that he was unknown to those who sold goods to the firm; it appearing that they, before extending credit to the firm, made inquiries, while he was a partner, of commercial agencies, as to the firm's members and their financial standing, and he being unwilling to state that he had not given statements to such agencies.—ROWLAND v. ESTES, Penn., 42 Atl. Rep. 528.

84. PARTNERSHIP — Failure of Managing Partner to Keep Books—Accounts.—Where the managing partner has failed to keep books, every presumption is against him in the settlement of the partnership accounts; and this rule applies against a creditor who seeks to subject the interest of the managing partner in the assets.—THOMAS v. WINCHESTER BANK, Ky., 49 S. W. Rep. 539.

85. PARTNERSHIP—Receivers—Pleading.— Allegations that the surviving partner of a firm was colluding with a fictitious creditor to defraud firm creditors, and was wasting firm assets, are sufficient to authorize appointment of a receiver at the instance of simple contract creditors, whose demands are not reduced to judgment, or who have acquired no liens.—BYRNE v. FIRST NAT. BANK OF LAKE CHARLES, LA., Tex., 49 S. W. Rep. 106.

86. PLEDGES — Right of Pledgee against Attaching Creditor.—A pledgee of warehouse receipts has a lien prior to that of a creditor of the owner, who attached them in the hands of the distilling company which issued them, to which company they had been delivered by the pledgee for verification.—ANHEUSER-BUSCH BREW. ASSN. v. DAVIESS COUNTY DISTILLING CO., Ky., 49 S. W. Rep. 541.

87. PLEADING—Denial of Execution of Release—Verification.—Where it is shown that a plaintiff is unable to read the English language, he will be permitted to deny the execution of a release pleaded by defendant, and written in English, on information and belief; nor will a second paragraph of the reply be stricken out which alleges that, if he executed the release, he did so in ignorance of the nature of the instruments, and by reason of the fraudulent misrepresentations of defendant as to its contents.—KOSZTELNIK v. BETHLEHEM IRON CO., U. S. C. C., E. D. (N. Y.), 91 Fed. Rep. 606.

88. PRINCIPAL AND AGENT — Fraud of Agent.—Where frauds are committed by an agent in procuring title to property for the benefit of his principal, the principal is chargeable therewith, in the same manner as if he had committed them personally.—MCINTIRE v. PRYOR, U. S. S. C., 19 S. C. Rep. 352.

89. PROCESS—Return—Sufficiency.—Where the statute provides that original process shall be served "upon the defendant personally, if to be found in the county, by handing him a true copy of the process," a return, "Executed this writ by personal service on" defendant, is insufficient for failing to state the facts on which the officer bases his conclusion that the service was personal, although the statute also provides that a general return of "Executed" is sufficient.—DOGAN v. BARNES, Miss., 24 South. Rep. 965.

90. RAILROAD COMPANY — Injury at Crossing—Negligence.—Defendant's train was standing across the main highway in a village when an alarm of fire was sounded. The bells on defendant's engine were rung, and the whistles blown, to give the alarm. Many persons were crossing between the cars to reach the fire. While plaintiff was crossing between the cars they were suddenly moved, and he was injured. Defendant's servants at the time knew that people were crossing between the cars. Held, that defendant's servants were negligent in moving the train under the circumstances.—SAN ANTONIO, ETC. RY. CO. v. GREEN, Tex., 49 S. W. Rep. 670.

91. RAILROAD COMPANY — Injury to Bicyclist—Negligence.—A boy on a bicycle turned a corner, and in passing around a wagon, which stood between the curb and defendant's tracks, struck a car which was approaching on a track so close to the wagon that there was no room for the bicycle to pass between. The motorman had his head turned, looking for people approaching from the opposite direction, but the bicyclist could not have been seen until he rode past the end of the wagon, when the car was so close that it would have been impossible to stop it in time. Held, that the motorman was not negligent.—GOULD v. UNION TRACTION CO., Penn., 42 Atl. Rep. 477.

92. RAILROAD COMPANY—Injury to Land—Damages.—Permanent damages for injury to land, and past damages for injury to crops thereon, may be recovered in the same action, where the past damages were not considered in ascertaining the amount of the permanent damages.—RIDLEY v. SEABOARD & R. R. CO., N. Car., 32 S. E. Rep. 379.

93. RAILROAD COMPANY—Killing Stock.—In an action for the killing of stock by a train at a crossing, an instruction that, if the company failed to give the statutory signals, it would be negligence, and to find for plaintiff for such damages as resulted from the negligence, is not sufficiently clear, as not showing that the failure of the company must have been the proximate cause of the injury.—TEXAS & P. RY. CO. v. SCRIVENER, Tex., 49 S. W. Rep. 649.

94. RAILROAD COMPANY — Negligence—Knowledge of Peril.—In an action for injuries to plaintiff's son by moving a train standing at a crossing while the son was passing between the cars, evidence was admissible that others were also crossing at the time, to the knowledge of defendant's servants, who knew that persons were in danger when they moved the train.—SAN ANTONIO, ETC. RY. CO. v. GREEN, Tex., 49 S. W. Rep. 672.

95. RAILROAD COMPANY — Trespasser—Knowledge of Danger.—Where an engineer on a moving engine throws steam so as to strike a trespasser standing on the footboard, causing him to jump, whereby he was injured, an instruction that if the engineer threw the steam to frighten the trespasser off, and such act was negligent, defendant was liable, requires the finding of a fact making the engineer's act willful, so that the additional requirement that it must also have been negligent was harmless.—GALVESTON, ETC. RY. CO. v. ZANTZINGER, Tex., 49 S. W. Rep. 677.

96. RECEIVER—Interest—Claims.—Where property of an insolvent passes into the hands of a receiver, and, by order of court, payment of claims is stayed, interest is not allowed on such claims pending the stay.—GRAND TRUNK RY. CO. v. CENTRAL VERMONT R. CO., U. S. C. C., D. (Vt.), 91 Fed. Rep. 569.

97. REMOVAL OF CAUSES—Action against Federal Receivers.—A federal court will take judicial notice that defendants, who are sued in the State court as receivers operating a railroad, are acting under its own appointment, as shown by its records, and hence that a federal question is disclosed, although the plaintiff's petition is silent as to the authority under which defendants were acting.—PITKIN v. COWEN, U. S. C. C., S. D. (Ohio), 91 Fed. Rep. 599.

98. SALE — Contract Procured by Fraud—Acquiescence.—A contract of sale, though procured by fraudulent representations, is not thereby rendered void, but merely voidable.—FLEMING v. HANLEY, R. I., 42 Atl. Rep. 520.

99. SALES—Fraud.—A party defrauded in the purchase of goods cannot retain the goods and escape his obligations on account of the fraud.—CALDWELL v. DUTTON, Tex., 49 S. W. Rep. 723.

100. SALES—Right to Recover Goods Sold.—The seller may recover goods sold, if he shows they were bought by false representations as to credit, or with the intention not to pay for them.—B. F. AVERY & SONS v. DICKSON, Tex., 49 S. W. Rep. 662.

101. SET-OFF—Pendency of Another Action.—Defendant cannot avail itself of a set-off so long, at least, as it keeps on the docket its suit against plaintiff, based in part on the same claims set up in the pleas of set-off. —BANIGAN v. WOONSOCKET RUBBER CO., R. I., 42 Atl. Rep. 518.

102. SLANDER — Venue—Action.—Under Civ. Code, § 74, providing that "every action for an injury to the character of the plaintiff, against a defendant residing in this State, must be brought in the county in which the defendant resides, or in which the injury is done," an action of slander, whether the defendant is a resident or non-resident of the State, may be brought in the county in which the slanderous words were spoken, and service of summons in any county in the State will give jurisdiction.—BRIGHT v. HAMMOND, Ky., 49 S. W. Rep. 773.

103. STATUTES — Implied Repeal — Construction of Codes.—In construing a revision of statutes, the presumption is that the codifiers and the legislature did not intend to change the laws as they formerly stood. —BRAUN v. STATE, Tex., 49 S. W. Rep. 620.

104. TAXATION—Assessment against Unknown Owner. —A petition by the State to recover taxes assessed against the "unknown owner" of certain described land, from defendants, and to foreclose the State's lien thereon, which failed to show that defendants ever owned or claimed any interest in such land, is fatally defective.—STATE v. MANTOOTH, Tex., 49 S. W. Rep. 683.

105. TAXATION—Effect of Sale for Taxes.—Under the laws of North Carolina the claim and lien of the State for taxes on real estate is *in rem;* and although land is in the possession of a life tenant, upon whom rests the legal duty of paying the taxes thereon, a sale for their non-payment conveys the entire title, and not merely the life estate.—CUMMINGS v. CUMMINGS, U. S. C. C., W. D. (N. Car.), 91 Fed. Rep. 602.

106. TAXATION — Turnpikes — Exemption.—The provision in the charter of a turnpike company, that its property shall not be liable for taxation, does not exempt it from a privilege tax for the right to operate the turnpike.—HARKREADER v. LEBANON & N. TURNPIKE CO., Tenn., 49 S. W. Rep. 751.

107. TAX TITLES—Mortgages—Estoppel.—Where the mortgagor warrants the title, and covenants to pay all taxes, a purchaser from him, who assumes the mortgage as part of the price, and procures an extension of it, cannot acquire a tax title, as against the mortgagee, though the taxes were delinquent before the purchase. —BROWN v. AVERY, Mich., 78 N. W. Rep. 331.

108. TAX TITLE—Void Tax Sale—Adverse Possession. —Continuous and adverse possession of land for more than two years, under an invalid tax deed, gives the holder a valid title thereto, unless the right to redeem existed.—MCCONNELL v. SWEPSTON, Ark., 49 S. W. Rep. 566.

109. TENANTS IN COMMON—Adverse Claim.—A widow of a tenant in common of land is, by reason of her dower, jointly interested in the land with the other tenant in common, so that she cannot acquire an adverse title, to his exclusion.—ENYARD v. ENYARD, Penn., 42 Atl. Rep. 526.

110. TRIAL — Direction of Verdict.—In an action against a municipal corporation for damages for a personal injury, alleged to have been caused by defendant's negligence, where the right of plaintiffs to recover depended on questions of fact respecting which the evidence was conflicting, a request to direct a verdict in favor of defendant was properly refused.—NUDD v. BOROUGH OF LANSDOWNE, Penn., 42 Atl. Rep. 474.

111. TRIAL—Verdict—Amendment.—Where the court has permitted the jury to amend its verdict, it is error for it to reject the amended verdict, and enter judgment on the original verdict.—GEORGE v. BELK, Tenn., 49 S. W. Rep. 748.

112. TRUSTS FOR SALE OF LAND—Revocation.—Devisees of land who executed a written agreement reciting that they desired to avoid the inconvenience and expense of selling it, and that all the devisor's debts were paid, which then conveyed the land to a trust company to sell and account for the proceeds, retaining commissions, also declaring the trust irrevocable, so that the death of any of the grantors might not embarrass its execution, cannot revoke such trust after a sale has been made and money paid, though the deed has not yet been executed.—P'POOL v. UNION BANK & TRUST CO., Tenn., 49 S. W. Rep. 741.

113. VENDOR AND PURCHASER—Assumption of Debts. —An agreement by the grantee, as part consideration for the conveyance, to assume a debt owing by the grantor, makes him personally liable, and fixes a lien on the property conveyed to secure the debt so assumed.—MITCHELL v. NATIONAL RAILWAY BUILDING & LOAN ASSN., Tex., 49 S. W. Rep. 624.

114. VENDOR AND PURCHASER—Infants—Rescission.— A purchaser of land, giving a note for the price payable on condition that one of the vendors, a minor, should execute a deed on coming of age before the maturity of the note, is liable to the other vendors for their proportionate share of the note at its maturity, after a deduction of a compensation for the loss of the minor's interest, where he fails to execute the deed at his majority, and the purchaser is unable to place the vendors *in statu quo* because of the burning of a building, and is unwilling to surrender improvements made by him without compensation.—ARCHER v. TURRELL, Ark., 49 S. W. Rep. 568.

115. VENDOR AND PURCHASER—Rescission—Evidence. —On an issue whether a sale of land had been rescinded by agreement of the parties, the inventory of the estate of the vendor's husband, showing the land inventoried as part of his estate, the receipt by him of the vendee's notes for the price, and their subsequent return, is inadmissible.—LYLE v. CLARK, Miss., 24 South. Rep. 966.

116. WATERS—Surface Waters—Obstruction.—A landowner may repel surface water by an obstruction without incurring liability for damage to an adjoining proprietor, unless a nuisance *per se* is created by the accumulation of the water.—BALTZEGER v. CAROLINA MIDLAND RY. CO., S. Car., 32 S. E. Rep. 358.

117. WILLS—Contest—Interested Persons.—The creditor of an heir is not a party interested, within Code 1896, § 4287 (Code 1886, § 1989), permitting any person interested therein, or any person who, if the testator had died intestate, would have been an heir or distributee, to contest a will.—LOCKARD v. STEPHENSON, Ala., 24 South. Rep. 996.

118. WILLS—Conversion—Distribution of Proceeds.— Where a testator, by his will, worked a conversion of his property into personalty, and provided that it be divided between his widow and three children, "in such proportions and upon such terms and conditions as they would be entitled to the same under the intestate laws of this commonwealth had I died intestate," the proceeds are to be distributed as personalty, and not as realty.—IN RE KLOTZ'S ESTATE, Penn., 42 Atl. Rep. 477.

119. WILLS—General Legacies—Charges on Real Estate.—A legacy is not chargeable on real estate, unless the will clearly exhibits an intent to so charge it.— CAIRNS v. SMITH, Tex., 49 S. W. Rep. 728.

120. WILLS—Title to Support Action.—A devise to testator's wife during her natural life or widowhood terminates on her re-marriage.—BEDDARD v. HARRINGTON, N. Car., 32 S. E. Rep. 377.